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## The Significance of Signatures: Why the Framers Signed the Constitution and What They Meant by Doing So

**ABSTRACT.** The signing of the U.S. Constitution is traditionally understood as the closing act of the Constitutional Convention. This Note provides an alternative account, one that understands the Constitution's signing as the opening act of the ratification campaign that followed in the Convention's wake. To begin, the Note explains the signatures' ambiguous form as the product of political maneuvering designed to win support for the Constitution during ratification. The Note then hypothesizes two ways in which the signatures may have helped to secure this support: (1) by highlighting pro-Constitution selling-points likely to resonate with the ratifying public; and (2) by limiting the ability of the signers to distance themselves from the Constitution once ratification battles had begun. Finally, the Note identifies a few respects in which this ratification-centered account of the Constitution's signing may influence our modern-day understanding of the document.

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**INTRODUCTION**

On September 17, 1787, the final day of the Constitutional Convention, North Carolina delegate Hugh Williamson made a proposal. The proposal did not concern any substantive provision of the Constitution, the final draft of which was all but complete, and it did not call for any additional orders of business for the day. Instead, Williamson's proposal concerned the delegates' plan to sign the Constitution. Speaking just hours before business concluded in Philadelphia, Williamson voiced his opposition to this plan, suggesting instead that "the signing should be confined to the letter accompanying the Constitution to Congress[] which might perhaps do nearly as well, and would be found satisfactory to some members who disliked the Constitution."<sup>1</sup>

There appear to be no further records of Williamson's thinking on this matter, so we cannot know for sure what motivated his proposal. That said, Williamson could have advanced at least five arguments in favor of leaving the Constitution unsigned.

The first argument—and the one that Williamson's brief remarks gesture toward—relates to those delegates who harbored doubts about the Convention's final product. In particular, Williamson could have argued that dissatisfied delegates would have fewer reservations about signing a cover letter than about signing the Constitution itself, because signatures on a cover letter, especially if accompanied by the right wording, were less likely to translate into an unqualified endorsement of the Convention's work. Given the choice between a fully signed cover letter and a partially signed Constitution, Williamson appears to have preferred the former, and for good reason. The Constitution was soon to go before ratifying conventions across the country, and some expression of total unanimity among the Philadelphia delegates, even if vague, might well have looked better than a clearly nonunanimous expression on the face of the document submitted for review.

Second, Williamson could have reminded his colleagues that the Constitution, if ratified, would belong not to the delegates at the Constitutional Convention, but to the people of the United States. As Article VII made clear, the document was to remain a mere proposed charter of governance until at least nine popularly elected state conventions had ratified it.<sup>2</sup> And, as Article V made clear, the document, once ratified, could be changed

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1. 2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 645 (Max Farrand ed., 1911) [hereinafter FARRAND'S RECORDS].

2. U.S. CONST. art. VII. Even by June 21, 1788, when New Hampshire became the ninth state to ratify, the Constitution still existed only as law-to-be, and, as the Supreme Court would

freely by the action of a supermajority of state legislative bodies. Signing this document, Williamson could have argued, would take authorship credit away from “We the People,” the collective entity in whose name the Constitution spoke and whose assent alone could give it legal force.<sup>3</sup>

Third, Williamson might have noted that, by signing the Constitution, the delegates ran the risk of putting the names of foreigners on the national founding charter. Article VII, after all, required only nine states to ratify the Constitution, so it was possible that the new nation would exclude as many as four of the states whose delegates’ names appeared on the document. Concerns about referencing states not in the union had already prompted the framers to revise an earlier version of the Preamble,<sup>4</sup> and these concerns seem equally

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acknowledge thirty-one years later, this law-to-be did not come into force until the first Article I Congress convened in Philadelphia on March 4, 1789. *See* *Owings v. Speed*, 18 U.S. (5 Wheat.) 420, 423 (1820) (holding that the Constitution’s Contract Clause did not apply to legislative acts done prior to the “first Wednesday in March, 1789”). *But see* Gary Lawson & Guy Seidman, *When Did the Constitution Become Law?*, 77 NOTRE DAME L. REV. 1, 4 (2001) (arguing that the *Owings* Court “grossly oversimplified the problem” and that “[d]ifferent clauses of the Constitution actually became effective at different points in time, and certain crucial provisions . . . took effect immediately upon completion of the ninth ratification in 1788”).

3. Akhil Amar has argued that:

The Preamble began the proposed Constitution; Article VII ended it. The Preamble said that Americans would “establish this Constitution”; Article VII said *how* we would “Establish[] this Constitution.” The Preamble said this deed would be done by “the People”; Article VII clarified that the people would act via specially elected “Conventions.” The Preamble invoked the people of “the United States”; Article VII defined what that phrase meant both before and after the act of constitution. The Preamble consisted of a single sentence; so did Article VII.

AKHIL REED AMAR, *AMERICA’S CONSTITUTION: A BIOGRAPHY* 29 (2005) (alteration and emphasis in original). While this claim is certainly true, it is also true that the conspicuous presence of the signatures beneath Article VII makes the Preamble/Article VII “bookend” relationship less apparent.

4. In its original form, the Preamble began with: “We, the people of the states of New Hampshire, Massachusetts, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia . . .” 1 THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION 224 (photo. reprint 1987) (Jonathan Elliot ed., 2d ed. 1888) [hereinafter *ELLIOT’S DEBATES*]; *see also* 1 ROGER FOSTER, *COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES, HISTORICAL AND JURIDICAL* § 19, at 94-95 (1895) (arguing that this version of the preamble was discarded on account of the nine-state requirement of Article VII).

applicable to the signatures, especially in light of the delegates' plan to sign on a state-by-state basis.<sup>5</sup>

Fourth, Williamson could have pointed to tradition. None of the "constitutive" American documents with which he and his colleagues were familiar—including the Articles of Confederation and the eighteenth-century state constitutions—had ever been signed at such a preliminary stage in their legal development.<sup>6</sup> These documents had taken on their signatures during, or well after, the time that they acquired legal force. The Constitution, in contrast, remained a mere proposal at the time of its signing and still faced many hurdles before it could become law.

Finally, Williamson could have taken a long-term perspective, arguing that the signatures would historicize the Constitution. He might have expressed concern that the delegates' names would overemphasize the document's origins and thereby tempt future generations to perceive it as frozen in the past rather than adaptable to their time. He might have added that a listing of names would interrupt the flow from the main text of the document to its future amendments and that the nation would soon embrace far more states than the ones identified by the signatures. In short, a list of signatures entered in 1787 might come to look ill fitting on a Constitution "intended to endure for ages to come."<sup>7</sup>

Rather than heed Williamson's advice, the delegates at Philadelphia concluded business by affixing their names to the document over which they had spent the past four months laboring. Days later, when copies of the Constitution began to appear in newspapers around the country,<sup>8</sup> everyday Americans would find at its bottom a veritable "Who's Who" of the nation's political leaders—including such titans as Benjamin Franklin,

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5. It would have been particularly appropriate for Williamson to make this point, as his home State of North Carolina would end up becoming such a foreign nation (and he himself a foreign signatory) during the first few months of the new nation's existence. Cf. Lawson & Seidman, *supra* note 2 (exploring the transition period between the Constitution's adoption and the subsequent ratifications of North Carolina and Rhode Island). Similarly, Williamson could have noted that Rhode Island, a state that had never bothered to send delegates to Philadelphia, might end up belonging to the United States, albeit without a constitutional signature acknowledging its inclusion.

6. For further elaboration of this point, see *infra* Section I.B.

7. *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 415 (1819).

8. See, e.g., PA. PACKET, & DAILY ADVERTISER, Sept. 19, 1787, reprinted in RICHARD B. BERNSTEIN WITH KYM S. RICE, ARE WE TO BE A NATION? THE MAKING OF THE CONSTITUTION 187-90 (1987).

Alexander Hamilton, James Madison, Gouverneur Morris, James Wilson, and the soon-to-be first President, George Washington.

This Note attempts to explain why, in spite of all the potential objections to the signing of the Constitution, the delegates at Philadelphia put their names to the document. Broadly speaking, there were two compelling reasons for signing the Constitution, both of which anticipated the fierce battle for ratification that would follow on the heels of the Constitutional Convention. First, the delegates' signatures would function as a marketing device, highlighting important pro-Constitution selling points to the people who would ultimately determine its fate. Second, the signatures would function as a constraining device, preventing the Constitution's signatories—all of whom carried considerable local influence—from publicly opposing the document once the ratification battles began.

But this is only half of the signatures' story. For, while the marketing and constraining functions help to explain the signatures' presence on the face of the Constitution, they leave unanswered the question of what the delegates at Philadelphia intended to convey—and ultimately did convey—with their signatures. What, in other words, did the framers understand themselves to communicate when they put their names onto the Constitution and how were their signatures interpreted by those who encountered them during ratification? As it turns out, the answer to this question is by no means straightforward. Indeed, as this Note will show, the signatures were shrouded in ambiguity from the moment they took form, leading some to interpret them as mere attestations to the fact that the Convention adopted the Constitution and others to interpret them as endorsements of the Constitution itself. This ambiguity, moreover, resulted from design rather than accident, and it ended up increasing the effectiveness of the signatures' ratification-related functions.

The Note proceeds as follows: Part I provides historical context, including a description of the Constitution's signing and a comparison of the Constitution's signatures to those on similar documents already in existence in 1787. Part II turns to the signatures' ambiguity, analyzing the various interpretations that might have been given to the signing act—both by the signers themselves and by those who first confronted the signatures—and explaining how and why these various interpretations might have arisen. Part III then addresses the central question: What was the signatures' purpose? Section III.A. shows that the signatures functioned as a marketing device, explaining the signatures' role in underscoring the unanimity of affairs at Philadelphia, the prestige of the framers, and the momentousness of the choice the ratifiers had been called on to make. Section III.B. then demonstrates that the signatures also functioned as a constraining device, which effectively impeded signatories with reservations about the Constitution from later

opposing ratification. Finally, Part IV discusses some ways in which my historical discussion of the signatures might influence our contemporary understanding of the Constitution.

## I. THE SIGNATURES IN HISTORICAL CONTEXT

### A. *The Signing of the Constitution*

It is unclear whether, at the outset of the Convention, the delegates at Philadelphia expected that their final product would display their names. From Madison's notes we know that at least one delegate, South Carolinian Charles Cotesworth Pinckney, had acknowledged the possibility of signing by August 22nd, less than a month before the signing actually occurred. Opposing a proposed clause that would ban the importation of slaves, General Pinckney "declared it to be his firm opinion that if himself & all his colleagues were to *sign the Constitution* [including such a clause] & use their personal influence, it would be of no avail towards obtaining the assent of their Constituents."<sup>9</sup> Also, by mid-September Elbridge Gerry had stated his intention to "withhold his name" from the Constitution, even though no one had yet moved to sign it.<sup>10</sup>

The formal motion to sign came from Benjamin Franklin, the oldest delegate at Philadelphia.<sup>11</sup> Franklin introduced his motion with one of the Convention's better known speeches.<sup>12</sup> (Too frail to speak at length, Franklin had fellow Pennsylvanian James Wilson read the speech on his behalf.)<sup>13</sup> Making reference to his age and experience, Franklin noted that "the older I grow, the more apt I am to doubt my own judgment, and to pay more respect

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9. 2 FARRAND'S RECORDS, *supra* note 1, at 371 (emphasis added).

10. *See id.* at 632.

11. For a detailed account of Franklin's participation in the Constitutional Convention, see WILLIAM G. CARR, *THE OLDEST DELEGATE: FRANKLIN IN THE CONSTITUTIONAL CONVENTION* (1990). Carr contests the conventional wisdom that Franklin's role at Philadelphia was primarily ceremonial. He argues instead that Franklin was actively involved in shaping the document and generating consensus for its various provisions.

12. For a detailed analysis of Franklin's speech, see Barbara B. Oberg, "Plain, Insinuating, Persuasive": Benjamin Franklin's Final Speech to the Constitutional Convention of 1787, in *REAPPRAISING BENJAMIN FRANKLIN: A BICENTENNIAL PERSPECTIVE* 175 (J.A. Leo Lemay ed., 1993).

13. 2 FARRAND'S RECORDS, *supra* note 1, at 641 ("Docr. Franklin rose with a speech in his hand, which he had reduced to writing for his own conveniency, and which Mr. Wilson read . . .").

to the judgment of others.”<sup>14</sup> Then, acknowledging the extraordinary difficulty of the Convention’s task, he concluded that he and his fellow delegates had done excellent work:

It . . . astonishes me, Sir, to find this system approaching so near to perfection as it does; and I think it will astonish our enemies, who are waiting with confidence to hear that our councils are confounded like those of the Builders of Babel; and that our States are on the point of separation, only to meet hereafter for the purpose of cutting one another’s throats. Thus I consent, Sir, to this Constitution because I expect no better, and because I am not sure, that it is not the best.<sup>15</sup>

Having voiced approval for the content of the Constitution, Franklin reached the crux of his speech:

Much of the strength & efficiency of any Government in procuring and securing happiness to the people, depends[] on the general opinion of the goodness of the Government, as well as of the wisdom and integrity of its Governors. I hope therefore that for our own sakes as a part of the people, and for the sake of posterity, we shall act heartily and unanimously in recommending this Constitution (if approved by Congress & confirmed by the Conventions) wherever our influence may extend, and turn our future thoughts & endeavors to the means of having it well administered.<sup>16</sup>

He then moved that the delegates sign the Constitution.<sup>17</sup>

Debate followed. Edmund Randolph of Virginia and Elbridge Gerry of Massachusetts stated their intentions not to sign, highlighting a variety of objections to the document’s overall plan. Franklin responded by putting in a final plea for unanimity, and other delegates echoed his calls to set aside differences for the greater good.<sup>18</sup> Eventually the motion to sign was put to a vote. Ten states voted to do so, none against, and one state, South Carolina,

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14. *Id.* at 642.

15. *Id.* at 642-43.

16. *Id.* at 643.

17. Recalling Franklin’s speech, Maryland delegate James McHenry later wrote, “It was plain, insinuating persuasive—and in any event of the system guarded the Doctor’s fame.” *Id.* at 649.

18. *Id.* at 644-49.



split on the motion.<sup>19</sup> (Neither New York nor Rhode Island was eligible to vote because neither state had a quorum of delegates present at the time.) All individual delegates then in attendance—except for Randolph, Gerry, and Randolph’s fellow Virginian, George Mason—proceeded to sign the Constitution, which was then given to William Jackson, the Convention’s secretary, for delivery to Congress.

All told, forty signatures made their way onto the document, with thirty-nine of these signatures belonging to the Convention’s delegates and one belonging to Secretary Jackson. At the top of the list comes the name of George Washington, who signed both as “deputy from Virginia” and president of the Constitutional Convention. Below Washington’s name appear the signatures of the remaining delegates, grouped by states listed in geographic order from north to south. The signatures occupy two columns of the Constitution’s final page, with New Hampshire’s signatures placed at the top of the right column and Georgia’s concluding the roster in the bottom of the left column. Jackson’s name appears to the left-hand side of all of these names, introduced by the word “Attest.”<sup>20</sup>

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19. *Id.* at 647. South Carolina’s delegation included Charles Cotesworth Pinckney and Pierce Butler, both of whom objected to the “equivocal form” of the Constitution’s signatures. *See infra* Section II.A.

20. This odd physical arrangement can best be explained as accidental. Presumably the signers began listing their names with the expectation that all thirty-nine would fit into one column. As it later became clear that this single column would not accommodate all the delegates’ names, they had to make the slightly awkward move of creating a second column to the left of the one already in place. *See* 2 JOHN R. VILE, *THE CONSTITUTIONAL CONVENTION OF 1787: A COMPREHENSIVE ENCYCLOPEDIA OF AMERICA’S FOUNDING* 721 (2005) (“By the time the delegates from New Hampshire through Pennsylvania had signed the document, the signatures reached the end of the page. Signatures from delegates from Delaware and from Georgia are thus recorded in another column to the left.”).

Figure 1.

SIGNATURE PAGE OF THE CONSTITUTION

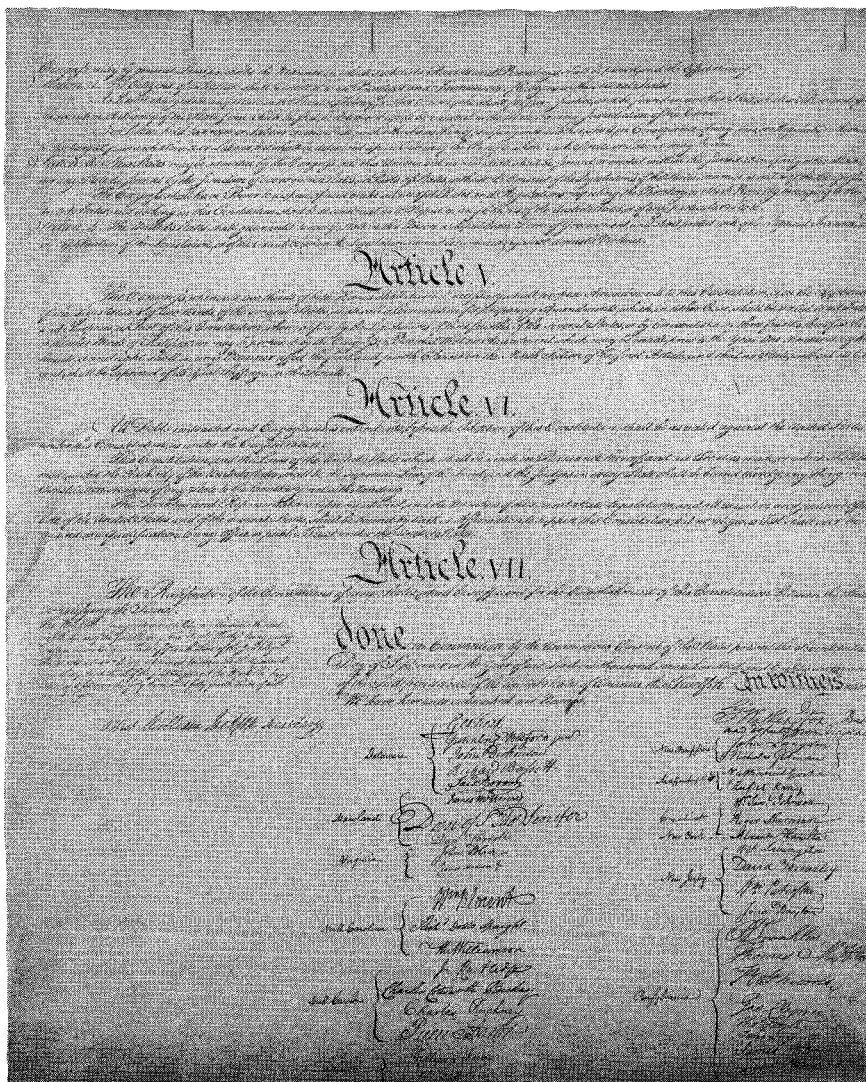


Image courtesy of the National Archives, Washington, D.C.

Two days later, the *Pennsylvania Packet and Daily Advertiser* became the first newspaper to publish the Constitution.<sup>21</sup> Though the paper could not reproduce the handwritten names of the signers, it displayed typewritten versions in the same state-by-state form as on the Constitution's concluding page.<sup>22</sup> Similar versions of the signatures would soon crop up in many other major American newspapers. Thus, while the people could not see the framers' signatures firsthand, they would become well aware of the Constitution's signing.

*B. Precursors to the Constitution's Signatures*

The U.S. Constitution was not the first document of its kind to bear signatures. By 1787, most states had passed constitutions of their own, and most of these constitutions displayed signatures in one form or another. Signatures also appeared on the face of the Articles of Confederation, the very document the Constitution was intended to replace. In short, the delegates could point to a number of historical precedents in support of their decision to sign.<sup>23</sup>

To be sure, these precedents may remove some of the mystery from the Constitution's signatures. Given that past American framers had signed past American charters, the signing of the Constitution may be seen, at least in part, as a reflexive nod to a well-established tradition. But, as I will argue in this Part, the historical connection between the Constitution's signatures and those that were affixed to earlier documents is more tenuous than it might at first appear. A closer comparison reveals important differences—both formal and semantic—and these differences complicate any effort to characterize the Constitution's signing as based primarily on instinct or adherence to historical practice.

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21. See 2 VILE, *supra* note 20, at 559.

22. With two exceptions: first, the printer rearranged the two columns of the signatures, such that New Hampshire began the left column and Georgia ended the right column. Recall that things are flipped on the original Constitution: New Hampshire begins the right column and Georgia ends the left. Second, the printer replaced most of the abbreviations with fully spelled out words. Thus, "Wm. Blount" became "William Blount," "J. Rutledge" became "John Rutledge," each "Jr." became "Junior," and so on. PA. PACKET, & DAILY ADVERTISER, *supra* note 8.

23. The Declaration of Independence, of course, also displayed signatures, but it was not, at least explicitly, a constitutional document. As a result, I have omitted it from my discussion here. I will, however, have more to say about the Declaration's signatures in Part III. See *infra* Section III.B.

1. *Formal Differences*

There is a striking formal difference between the signatures on the federal Constitution and those on the early state constitutions: the Constitution contains a large number of signatures, while the state constitutions contained only a small number of signatures, if any at all. Indeed, during the spate of constitution-making in the early years of the Revolution, not one state saw fit to include more than three signatures on its founding charter.<sup>24</sup> Those states that did opt for signatures included the name of key presiding officers (particularly, the heads of legislative bodies) and sometimes the additional signature of a secretary.<sup>25</sup> In no state, however, were signatures affixed by all

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24. By 1787, eleven of the thirteen states had full-fledged constitutions. (Connecticut and Rhode Island had abstained from constitution-making during the Revolutionary period and had instead opted to work necessary changes into their preexisting royal charters.) For a brief summary of the various state constitutions that sprang into existence during the late eighteenth century, see WILLI PAUL ADAMS, *THE FIRST AMERICAN CONSTITUTIONS: REPUBLICAN IDEOLOGY AND THE MAKING OF THE STATE CONSTITUTIONS IN THE REVOLUTIONARY ERA* 5-6 (Rita Kimber & Robert Kimber trans., 1980); and Robert F. Williams, *The State Constitutions of the Founding Decade: Pennsylvania's Radical 1776 Constitution and Its Influences on American Constitutionalism*, 62 *TEMP. L. REV.* 541, 542-48 (1989), which summarizes the decade of state constitution-making prior to the Constitutional Convention. For a more detailed treatment of Connecticut's and Rhode Island's decisions to rework their charters in lieu of adopting constitutions, see ADAMS, *supra*, at 66-68; Charter of Conn. (April 23, 1662), *reprinted in* 1 FRANCIS NEWTON THORPE, *THE FEDERAL AND STATE CONSTITUTIONS, COLONIAL CHARTERS, AND OTHER ORGANIC LAWS OF THE STATES, TERRITORIES, AND COLONIES NOW OR HERETOFORE FORMING THE UNITED STATES OF AMERICA* 529-36 (1909); and Charter of R.I. (July 8, 1663), *reprinted in* 6 THORPE, *supra*, at 3211-22.
25. Of the eleven state constitutions in force at the time of the Constitutional Convention, two constitutions (Georgia and Virginia) bore no signatures at all. See GA. CONST. of 1777, *reprinted in* 2 THORPE, *supra* note 24, at 777-85; VA. CONST. of 1776, *reprinted in* 7 THORPE, *supra* note 24, at 3812-19. New Hampshire had adopted a provisional constitution in 1776 that bore no signatures, N.H. CONST. of 1776, *reprinted in* 4 THORPE, *supra* note 24, at 2451-53, but this constitution was replaced in 1784 by a constitution with two signatures at the bottom, N.H. CONST. of 1784, *reprinted in* 4 THORPE, *supra* note 24, at 2453-70. Displaying one signature apiece (that of a presiding officer) were the constitutions of Maryland, MD. CONST. of 1776, *reprinted in* 3 THORPE, *supra* note 24, at 1686-1701; New York, N.Y. CONST. of 1777, *reprinted in* 5 THORPE, *supra* note 24, at 2623-38; and Pennsylvania, PA. CONST. of 1776, *reprinted in* 5 THORPE, *supra* note 24, at 3081-92. Three more constitutions (Delaware, New Jersey, and North Carolina) followed in a similar mold, although these constitutions added a secretary's signature below each presiding officer's. See DEL. CONST. OF 1776, *reprinted in* 1 THORPE, *supra* note 24, at 562-68; N.J. CONST. OF 1776, *reprinted in* 5 THORPE, *supra* note 24, at 2594-98; N.C. CONST. OF 1776, *reprinted in* 5 THORPE, *supra* note 24, at 2787-94. South Carolina's Constitution displayed the signatures of the state president, the speaker of the legislative council, and the speaker of the general assembly, appearing as a

members of the legislative assemblies or other delegations that issued the founding document.

The Constitution's signatures also stand in contrast to the signatures on the Articles of Confederation. While these two sets of names did resemble each other in terms of numerosity,<sup>26</sup> the Articles' signatures differ from the Constitution's signatures in an important temporal respect. The Constitution's signing took place quickly, with all signers placing their names on the document during the afternoon of September 17, 1787. The Articles of Confederation, in contrast, acquired signatures over a long period of time—and only as states legally bound themselves to the document's provisions. Although the stated date of the Articles' signing is July 9, 1778 (and that in fact is the date on which representatives of eight states signed the document),<sup>27</sup> representatives from five states signed much later. Two of these states (North Carolina and Georgia) did not have delegates present in Philadelphia on July 9th, and three others (Maryland, New Jersey, and Delaware) had not yet

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block under the heading "Assented to." S.C. CONST. of 1778, *reprinted in* 6 THORPE, *supra* note 24, at 3248-57. The 1778 constitution was actually an amended version of the state's original 1776 constitution, which had been signed under the president/secretary model of Delaware, New Jersey, and North Carolina. S.C. CONST. of 1776, *reprinted in* 6 THORPE, *supra* note 24, at 3241-48.

The two remaining states, Massachusetts and New Hampshire, stand out because they were the only two states to provide for popular ratification of their constitutions. The 1780 Constitution of Massachusetts displayed the signatures of the president and secretary, but these signatures were added prior to the document's ratification. *See* JOURNAL OF THE CONVENTION FOR FRAMING A CONSTITUTION OF GOVERNMENT FOR THE STATE OF MASSACHUSETTS BAY (Boston, Dutton & Wentworth 1832). The president's signature appears directly beneath the text of the constitution, and the secretary's signature follows, introduced by the word "Attest." MASS. CONST. of 1780, *reprinted in* THE POPULAR SOURCES OF POLITICAL AUTHORITY: DOCUMENTS ON THE MASSACHUSETTS CONSTITUTION OF 1780, at 441-72 (1966) [hereinafter POPULAR SOURCES]. The New Hampshire constitution also displayed a president's and a secretary's signatures, but these signatures were added after ratification. N.H. CONST. of 1784, *reprinted in* 4 THORPE, *supra* note 24, at 2453-70.

26. A total of forty-eight names appear below the final Article, far more than appeared on any state constitution then in existence, and slightly more than the forty that appeared on the Constitution itself. *See* ARTICLES OF CONFEDERATION of 1781 art. XIII, para. 4. Indeed, more members of the Second Continental Congress signed the Articles of Confederation than were typically present for the Congress's daily business post-signing. *See* RICHARD B. MORRIS, THE FORGING OF THE UNION, 1781-1789, at 91-95 (1987) (discussing the low attendance in Philadelphia that followed the Articles' signing).
27. *See* ARTICLES OF CONFEDERATION of 1781 art. XIII, para. 3 ("Done at Philadelphia in the State of Pennsylvania the ninth day of July in the Year of our Lord One Thousand Seven Hundred and Seventy-Eight, and in the Third Year of the independence of America.").

authorized their delegates to sign.<sup>28</sup> As a result, these states' delegates had to wait—for nearly three years in Maryland's case—before finally affixing their names to the Articles.<sup>29</sup> One need look no further than the document itself for evidence of its signatures' gradual materialization. A total of nine different dates, ranging from July 9, 1778, to March 1, 1781, appear among the signers' names.

## 2. *Semantic Differences*

Signatures can carry a variety of meanings. At one level, a signature might simply *attest* to facts. When, for example, a third party puts her name to a will, she merely bears witness to the will's proper execution. A signature can also *endorse* ideas. When, for example, a citizen signs a petition, the signature does more than express agreement with facts contained in the instrument, it also evidences ideological support for the content of the instrument. Additionally, a signature can communicate *legal authentication*. When, for example, the U.S. President signs a piece of legislation, the signing act effects a transformation from bill to law.<sup>30</sup> To future viewers of this legislation, the President's signature does not necessarily indicate his support for the law, but it definitively establishes the legislation's status as legally valid material. Finally, a signature can communicate a *pledge* to abide by certain obligations. The classic example is a signature on a written contract, which conveys a party's pledge to discharge duties set forth in the instrument.<sup>31</sup>

The meaning of the Constitution's signatures contrasts with the meaning of both the state constitutions' signatures and the Articles' signatures. As to the state constitutions, it is important to observe that most state legislatures bypassed methods of popular ratification in promulgating their foundational

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28. See EDMUND CODY BURNETT, *THE CONTINENTAL CONGRESS* 344 (1941).

29. Of Maryland's recalcitrance, Burnett writes that "much grace would be required before she would cease to plague [Congress] or be persuaded to come in." *Id.* at 345.

30. U.S. CONST. art. I, § 7, cl. 2.

31. These categories are neither mutually exclusive nor exhaustive. They are not mutually exclusive because it is entirely possible for a signature to communicate more than one of the meanings described above. A witness's signature on a will, for example, can signal both an attestation to the will's creation and the will's legal authenticity, while a signature on a pamphlet might both attest to the signatory's authorship of the pamphlet and endorse the pamphlet's content. The categories are nonexhaustive, because certain types of signatures seem difficult to characterize as attesting, endorsing, authenticating, or pledging. Consider, for example, a celebrity's autograph on a piece of memorabilia, which seems to convey something qualitatively different from any of these four meanings.

charters of government.<sup>32</sup> Unlike the extraordinarily democratic and highly contentious process through which the federal Constitution became law, the state constitutions came into being through normal legislative processes marked by limited citizen involvement and little political fanfare.<sup>33</sup> Only Massachusetts and New Hampshire, the last two states to adopt constitutions before 1787, chose to solicit their citizens' direct approval before implementing their foundational plans of government. The rest of the states considered their constitutions fully operative upon final legislative approval. For these states, the act of signing closely coincided—both as a functional and a temporal matter—with their constitutions' transformation into law.<sup>34</sup>

For this reason, the signatures appearing on the state constitutions can be construed as *authenticating signatures*—signatures that signaled the legal validity of the material that preceded them. With only one exception,<sup>35</sup> eighteenth-century state representatives signed their constitutions at a final rather than intermediate stage of formation. These signatures thus tracked the metamorphosis from bill to law, attaching the signatories' names to legally operative provisions rather than legally inoperative proposals. Had these constitutions' signers penned their names at an earlier stage, perhaps during a period of debate or even during the run-up to a final vote, their signatures

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32. In New Jersey, New York, and Virginia, for example, preexisting legislative bodies enacted the proposed constitutions. The provincial congresses of Delaware, Maryland, and Pennsylvania did manage to provide for specially elected constitutional conventions, but even these conventions simply voted the proposed constitutions into law without submitting them to the people for ratification. North Carolina and Georgia took an intermediate route, assigning the drafting and adopting responsibilities to a regularly constituted congress, but holding elections for this congress immediately before it was to begin work on the state constitution. See ADAMS, *supra* note 24, at 68–93. A more democratic process of state constitution making occurred in Massachusetts. After nearly five years of attempted constitutions and failed ratifications, a newly elected constitutional convention drafted a constitution that was then ratified by the people. See POPULAR SOURCES, *supra* note 25, at 22–25. In 1784, New Hampshire adopted a new constitution pursuant to a Massachusetts-like ratification model. See SUSAN E. MARSHALL, *THE NEW HAMPSHIRE STATE CONSTITUTION: A REFERENCE GUIDE* 12 (2004).

33. See AMAR, *supra* note 3, at 9 (“In many states, sitting legislatures or closely analogous Revolutionary entities declared themselves solons and promulgated or revised constitutions on their own authority, sometimes without even waiting for new elections that might have given their constituents more say in the matter . . .”). Amar does point out that “[t]hings began to change as the Revolution wore on,” as the later constitutional enactments in Massachusetts and New Hampshire showed a marked democratic improvement. *Id.*

34. This observation holds true for New Hampshire as well, since the New Hampshire Constitution was signed after it had been ratified. See *supra* note 25.

35. See *supra* note 25 (describing Massachusetts's signatures).

would have lacked this authenticating dynamic. Instead, the signing act signified the existence of a legal relationship between these constitutions and their constituencies, in much the same way that the President's signature signifies the existence of a legal relationship between a federal statute and the federal populace.

The signatures on the Articles of Confederation also signified legal authenticity, as these signatures materialized at the final stage of the Articles' legal transformation and thereby communicated the existence of active rather than potential provisions of law. But the Articles' signatures also served as *pledging signatures*. As the text preceding the signatures made clear, the act of signing not only signaled the Articles' status as law, but it also generated pledges to abide by that law:

Know Ye, that we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do, by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained. *And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the united States' in congress assembled, on all questions which by the said confederation are submitted to them . . .*<sup>36</sup>

By the Articles' own terms, its signatures created both evidence of the document's authenticity and promises to honor the charter by adhering to laws enacted pursuant to it.

The Constitution's signatures, on the other hand, signified neither legal authenticity nor pledges. The signers could not have authenticated the document's status as law, because the Constitution did not become binding law until more than two years after its signing. As for pledging, nothing in the text preceding the Constitution's signatures indicated that the signers had assumed obligations to abide by the Constitution in the event of its enactment, or even that they had assumed obligations to support the Constitution's enactment.<sup>37</sup>

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36. ARTICLES OF CONFEDERATION of 1781 art. XIII, para. 2 (emphasis added).

37. This is not to say that the Constitution's signatures did not have a constraining effect on the signers. Indeed, as indicated by Section III.B. *infra*, the signatures' existence did make it difficult for the signatories to oppose the Constitution during ratification. This constraining effect, however, did not result from obligations that the signatories had knowingly taken on by signing. Rather, it resulted from the fact that many eighteenth-century Americans



In short, had the Constitution's signers—many of whom had been involved in the creation of the Articles and/or their respective state constitutions—wished to follow in the tradition of these documents, they would not have signed their names to the document on September 17, 1787. Rather, they would have waited for the ratification process, during which representatives of the ratifying states could have affixed signatures connoting legal validity, and perhaps also pledges to abide by the Constitution.<sup>38</sup> But the delegates at Philadelphia did not take this route, which indicates that their decision to sign was driven by something other than tradition-based impulses.

## II. THE SIGNATURES' AMBIGUITY

Given that the signatures did not signify authenticity or pledges to legal obligations, what did the delegates intend to express by signing the Constitution? The framework introduced above leaves us with two possibilities: attestations and endorsements. On the one hand, the delegates' signatures can be characterized as *attesting signatures*—signatures conveying the signatories' agreement with the fact that the Convention had duly promulgated the Constitution. Alternatively (or in addition), these signatures can be characterized as *endorsing signatures*—signatures conveying the signatories' ideological support for the Constitution's content.

In this Part, I will show that considerable ambiguity surrounded the attesting/endorsing question, with interpretive divisions manifesting themselves both prior to and after the signing ceremony. Having presented this ambiguity, I will then seek to explain it. In particular, I will argue that this ambiguity was the product of choice rather than carelessness—designed to entice as many delegates as possible into adding their names to the Constitution.

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understood the signatures to reflect the signers' endorsement of the Constitution, such that later attempts by the signers to oppose the Constitution would seem hypocritical and/or disingenuous.

38. This mode of signing could have taken one of two forms. First, state representatives might have signed the Constitution only after nine states had ratified, so as to authenticate the Constitution's taking on legal life in accordance with its own terms. Second, state representatives might have signed as each state ratified, thus signaling the legal authenticity of each state's decision to adopt the Constitution.

*A. Attesting Versus Endorsing: The Ambiguity Exposed*

*1. The Attesting Interpretation*

The best evidence in support of an attesting interpretation of the Constitution's signatures comes from the text of the Constitution itself. The so-called Attestation Clause contains the final piece of substantive language added to the document at the Constitutional Convention. It was proposed by Franklin, though his fellow Pennsylvanian Gouverneur Morris was responsible for its authorship.<sup>39</sup> It reads:

Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth In witness whereof We have hereunto subscribed our Names . . .<sup>40</sup>

Taken at face value, the Attestation Clause suggests that the Constitution's signatures do nothing more than attest. It begins by stating two facts about the Constitution—that it was “done” on September 17, 1787, and that it received the unanimous consent “of the States present”—and it then introduces the signers as witnesses to these facts. Additionally, the Attestation Clause makes no reference to endorsing; indeed, the conspicuous absence of endorsing terms might be interpreted to disclaim any intent to endorse. Madison reports that Gouverneur Morris saw the clause as attaching just such a limited meaning to the act of signing: “He remarked that the signing in the form proposed related only to the fact that the *States* present were unanimous.”<sup>41</sup>

Franklin, who had introduced the Attestation Clause, offered some additional support for the notion that the signatures evidenced only agreement with the fact that the Convention had formally adopted the Constitution. In arguing for signature of the Constitution, he opined that “[i]t is too soon to pledge ourselves before Congress and our Constituents shall have approved the plan.”<sup>42</sup> It is true that Franklin's earlier speech had sounded endorsement-like

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39. See 2 FARRAND'S RECORDS, *supra* note 1, at 643 (“This ambiguous form had been drawn up by Mr. G. M. in order to gain the dissenting members, and put into the hands of Doctr. Franklin that it might have the better chance of success.”).

40. U.S. CONST. art. VII, para. 4.

41. 2 FARRAND'S RECORDS, *supra* note 1, at 645.

42. *Id.* at 647. Franklin was responding to Charles Cotesworth Pinckney's assertion that he planned to “sign the Constitution with a view to support it with all his influence, and

themes, by calling on delegates to “act heartily and unanimously in recommending this Constitution,” but here too Franklin created ambiguity by qualifying these words with the conditional “if approved by Congress & confirmed by the Conventions.”<sup>43</sup>

The Attestation Clause’s timidity led directly to the signature of at least one delegate, William Blount of North Carolina. As recorded by Madison, “Mr[.] Blount said he had declared that he would not sign, so as to pledge himself in support of the plan, but he was relieved by the form proposed and would without committing himself attest the fact that the plan was the unanimous act of the States in Convention.”<sup>44</sup> If Blount viewed his signature as merely an attestation, it is entirely possible that other delegates did so as well.

Antifederalists, of course, favored an attesting interpretation, and they did their best to downplay the importance of the framers’ signatures. One citizen writing to the *Pennsylvania Herald* offered his own interpretation of the signatures as

[s]urely not an approbation of the plan: But merely what a majority of the members had agreed to *report* to Congress. . . . Let not the advocates for despotism think themselves secure in carrying this high handed plan of power, because the respected names of Washington and Franklin appear as witnesses—perhaps unwilling witnesses, that it was agreed to by “the States present.”<sup>45</sup>

This talking point appears to have gained some traction among the Constitution’s rank-and-file opponents. A Maryland citizen, for example, reported that “some have told me, that the General, Dr. Franklin, and some others, did only sign as witnesses, and that they had no hand in forming it.”<sup>46</sup>

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wished to pledge himself accordingly.” *Id.* The “pledging” discussed in this context should not be confused with the more formal sort of pledging reflected by the signatures on the Articles of Confederation. *See supra* text accompanying note 37. A more curious reference to pledges came from Elbridge Gerry, who stated that he “could not . . . by signing the Constitution pledge himself to abide by it at all events.” 2 FARRAND’S RECORDS, *supra* note 1, at 647. No one else at Philadelphia seemed to share Gerry’s interpretation of the signatures, so I have not explored it in depth within this Section.

43. 2 FARRAND’S RECORDS, *supra* note 1, at 643.

44. *Id.* at 646.

45. Letter to the Editor, PA. HERALD, & GEN. ADVERTISER, Oct. 27, 1787, at 334. This line of argument must have appealed to Antifederalists because it allowed them to minimize the importance of the Constitution’s signing without impugning the character of its signers.

46. *Extract of a Letter from Queen Anne’s County (Maryland) to a Gentleman in Philadelphia*, SALEM MERCURY, Dec. 4, 1787, at 3.

Such efforts to capitalize on the Attestation Clause's weak wording did not go unanticipated at Philadelphia, where General Pinckney had cautioned that "[w]e are not likely to gain many converts by the ambiguity of the proposed form of signing."<sup>47</sup>

## 2. *The Endorsing Interpretation*

One nevertheless gets the impression that signing meant something more than attesting, even to Franklin. The first section of his speech on September 17 had everything to do with the actual merits of the Constitution. Words like "agree," "consent," and "support" run through its text, and it even goes so far as to characterize the Constitution as a "system approaching . . . near to perfection."<sup>48</sup> Common sense also suggests that, if Franklin understood the Constitution's signatures as only attesting to the fact of the state delegations' consent, he would not have gone to such great lengths to solicit individuals to sign. If the signing of the Constitution was meant to signal nothing more than attestation, there would have been little to argue about. No one disagreed about the *fact* that the states present had unanimously agreed to the document.

While Franklin's words may have sent mixed messages, other delegates more explicitly advocated an endorsing interpretation. Charles Cotesworth Pinckney, for example, criticized "the ambiguity of the proposed form of signing," declaring that he would "sign the Constitution with a view to support it with all his influence, and wished to pledge himself accordingly."<sup>49</sup> Similarly, Jared Ingersol "did not consider the signing, either as a mere attestation of the fact, or as pledging the signers to support the Constitution at all events; but as a recommendation, of what, all things considered, was the most eligible."<sup>50</sup> James McHenry also gave an endorsing interpretation to his own signature, stating that it was "clear that I ought to give [the Constitution] all the support in my power."<sup>51</sup>

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47. 2 FARRAND'S RECORDS, *supra* note 1, at 647.

48. *Id.* at 642.

49. *Id.* at 647.

50. *Id.*

51. *Id.* at 650. Alexander Hamilton also embraced an endorsement interpretation. He explained his decision to sign by stating that the Constitution was better than nothing. "No man's ideas were more remote from the plan than [Hamilton's] own were known to be; but is it possible to deliberate between anarchy and Convulsion on one side, and the chance of good to be expected from the plan on the other." *Id.* at 645-46. Hugh Williamson also equated

Also sharing this interpretation was Delaware delegate John Dickinson, who, absent from Philadelphia that day, had asked George Read to sign the Constitution on his behalf.<sup>52</sup> Dickinson could not possibly have signed as an attesting witness, because he had not witnessed the final vote to which he would be attesting.<sup>53</sup> Inclusion of his name can thus be read in only one way—as approving of the Constitution, not as attesting to the mere fact of its adoption by the Convention.

Consider also the delegates at Philadelphia who refused to sign. It was reported, for example, that “Mr. Randolph could not but regard the signing in the proposed form, as the same with signing the Constitution. The change of form therefore could make no difference with him.”<sup>54</sup> Randolph’s sentiments on this point were echoed by his fellow nonsigner Elbridge Gerry, to whom “[t]he proposed form made no difference.”<sup>55</sup> For these two (and presumably George Mason as well), signing the Constitution meant more than attesting to its approval no matter what the text above the signatures said.

The Federalist press confirmed these suspicions. Pro-Constitution writers were quick to characterize the list of distinguished names on the document as proof of each delegate’s approval of the Constitution, and many took it for granted that the signatures communicated endorsements. A passage from the *New Haven Gazette* (originally printed in the *Boston Gazette*) is illustrative:

[L]et every unprejudiced patriotic mind candidly determine—Whether it is possible to conceive that *thirty-nine* members out of *forty-two*,

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signing with endorsing. See *id.* at 645 (“For himself he did not think a better plan was to be expected and had no scruples against putting his name to it.”).

52. See Letter from John Dickinson to George Read (Sept. 15, 1787), reprinted in 3 FARRAND’S RECORDS, *supra* note 1, at 81 (“Mr. Dickinson presents his compliments to Mr. Read, and requests that if the constitution, formed by the convention, is to be signed by the members of that body, Mr. Read will be so good as to subscribe Mr. Dickinson’s name—his indisposition and some particular circumstances requiring him to return home.”). A careful analysis of the handwriting, however, suggests it may have actually been Richard Bassett, Delaware’s other delegate, who added Dickinson’s name to the Constitution. See Michael E. Ruane, *Why Constitution’s Signatures and Signers Don’t Add Up*, PHILA. INQUIRER, Sept. 19, 1987, at 4B.

53. Professor Gordon Lloyd has concluded on the basis of Dickinson’s letter to Read and his billing receipts from Delaware that he was traveling home on September 15, the day the Convention voted to adopt the Constitution. See Gordon Lloyd, Sources for the Individual Delegate Attendance Record, <http://teachingamericanhistory.org/convention/attendance/sources.html> (last visited Jan. 20, 2010).

54. 2 FARRAND’S RECORDS, *supra* note 1, at 646.

55. *Id.* at 647.

which was the whole number the convention consisted of, would have affixed their signatures to a constitution by which themselves and posterity were to be governed in all generations, so *essentially* defective as [Elbridge Gerry] suggests?<sup>56</sup>

More directly to the point, a Pennsylvania writer derided the notion (advanced earlier by an Antifederalist editorialist) that the delegates signed only as witnesses to the fact of the Constitution's adoption: "If those whose names are subscribed to this instrument were only *witnesses*, who were *the parties*? Were not the subscribers appointed by the people for the express purpose of *making* this deed, and in what other form could they have shewn that they had accordingly made it?"<sup>57</sup> Similarly, a Maryland publication responded to the Antifederalist claim that "Doctor *Franklin* was opposed to the constitution, and consented to sign it merely as a witness," by quoting Franklin's exhortation that the Convention "act heartily and unanimously in recommending this constitution wherever our influence may extend."<sup>58</sup>

### *B. Accounting for the Differences: The Ambiguity Explained*

How can we account for these divergent views of the signatures' meaning? Why would the constitutional text support a limited attesting interpretation to its signatures, when so many of the delegates saw signing as also giving rise to endorsing? How do we reconcile, for example, Franklin's warning that "it is too soon to pledge ourselves" with his (and his fellow Federalists') aggressive solicitation of signatures?<sup>59</sup> What are we to make of all these cross-cutting pieces of evidence?

As illustrated by Franklin's presigning reflections, he and his fellow Federalists were well aware that many of their colleagues harbored serious doubts about the merits of the Constitution. Indeed, the Constitutional

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56. A Federalist, Letter to the Editor, NEW HAVEN GAZETTE & CONN. MAG., Nov. 22, 1787, at 315.

57. Letter to the Editor, PA. HERALD, & GEN. ADVERTISER, Nov. 10, 1787, at 2.

58. *Antifederal Arguments*, MD. J., Dec. 25, 1787, at 3, reprinted in 15 THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION 92, 92 (John P. Kaminski & Gaspare J. Saladino eds., 1983) [hereinafter DOCUMENTARY HISTORY].

59. Barbara Oberg has noted that "[i]n the final manifestation of his great political genius—his last speech—his successful argument for compromise opened Franklin once again to the charge that he was a sly fox, intending more—or less—than he said and saying something other than what he meant." Barbara B. Oberg, "Plain, Insinuating, Persuasive": Benjamin Franklin's Final Speech to the Constitutional Convention of 1787, in REAPPRAISING BENJAMIN FRANKLIN: A BICENTENNIAL PERSPECTIVE 175, 189 (J.A. Leo Lemay ed., 1993).

Convention had seen intense disagreement and disapproval throughout, and it is near certain that no delegate departed Philadelphia with the exact Constitution he had hoped for. At the same time, Franklin, Morris, and their fellow Federalists knew that a Constitution manifesting drafter disagreement would be at best embarrassing and at worst unratifiable. The challenge, then, was to make signing the Constitution a ritual that would placate fence-sitters and gung-ho supporters alike.

Viewed in this light, the signatures' ambiguity makes sense as the deliberate product of strategic political maneuvering. Hesitant delegates could take comfort in Franklin's cautious words and the watered-down language of the Attestation Clause. Meanwhile, staunch Federalists could point to Franklin's impassioned appeals for unanimous support as the primary reasons for penning their names. Different delegates could sign for different reasons, and to Franklin and other key supporters of the Constitution the reasons for signing mattered far less than the presence of signatures.

### III. THE SIGNATURES' PURPOSE

The forgoing discussion demonstrates that (a) the decision to sign the Constitution was not an obvious one, and (b) Franklin and his allies took steps to maximize the number of names appearing beneath Article VII. These two observations suggest that many of the delegates at the Constitutional Convention strongly desired to include signatures on the Constitution. But why?

The answer to this question, I believe, lies in the ratification process that followed in the Convention's wake. Unlike the state constitutions, most of which were not ratified at all, and unlike the Articles of Confederation, which was ratified with little public participation, the Constitution would have to endure an epic struggle for approval by the people.<sup>60</sup> From the *Federalist Papers* to the *Letters from the Federal Farmer* to thousands of other pamphlets, letters, and newspaper editorials circulated across the nation, arguments for and against the Federal Constitution would consume public attention throughout

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60. See BERNSTEIN, *supra* note 8, at 199 ("As hard-fought as any battle of the Revolution, [ratification] was a contest of words and arguments and votes, of parades and bonfires, with an occasional riot thrown in for good measure.").

the late 1780s.<sup>61</sup> And in the end, the Constitution's fate would turn on only a handful of votes in a handful of states.<sup>62</sup>

The standard account of the Constitution's signing places the event in the final chapter of the Philadelphia story.<sup>63</sup> But there is an alternative account—one that situates the signing in the first chapter of the ratification story. On this account, the signing of the Constitution makes sense not as an act looking back to the grueling efforts of the summer of 1787, but as an act looking forward to the upcoming fight for ratification. The signing, in other words, represented not so much a closing coda to the framers' work, but rather the opening salvo of the ratifiers' work—an act intended to generate and to maintain support for the document throughout the ratification process.

This Part discusses two ways in which the signatures supported the Federalists' efforts to secure the people's approval for the Constitution. Section III.A. demonstrates that the signatures functioned as a marketing device, putting a favorable gloss on the Constitution and, in a subtle way, making a case for its ratification. Section III.B. demonstrates that the signatures also functioned as a constraining device, locking in the support of delegates who would carry influential weight at their own ratification conventions.

#### *A. The Signatures as a Marketing Device*

The signatures supported the ratification campaign by highlighting three pro-Constitution selling points: the unanimity of the Convention's action, the prestige of the Convention's participants, and the momentousness of the choice presented by the ratification process.

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61. See generally *THE AMERICAN CONSTITUTION: FOR AND AGAINST* (J.R. Pole ed., 1987) (containing excerpts from the Federalist Papers and other pamphlets, articles, and speeches about the Constitution).

62. In Virginia and New York (two states indispensable to a consolidated federal union) the ratification votes were very close. Had a mere five of Virginia's votes gone the other way, the Constitution would have been rejected. See ROBERT ALLEN RUTLAND, *THE ORDEAL OF THE CONSTITUTION: THE ANTIFEDERALISTS AND THE RATIFICATION STRUGGLE OF 1787-1788*, at 250 (1966). Indeed, it took a Herculean effort on the part of James Madison and his whips to muster the votes needed to overcome entrenched Antifederalist opposition. See *id.* at 192-98, 218-34. In New York, news of ratification from Virginia ultimately tipped the scale for the Federalists, thirty votes to twenty-seven. See CATHERINE DRINKER BOWEN, *MIRACLE AT PHILADELPHIA: THE STORY OF THE CONSTITUTIONAL CONVENTION MAY TO SEPTEMBER 1787*, at 305-06 (1966).

63. See, e.g., BERNSTEIN, *supra* note 8, at 184-91; BOWEN, *supra* note 62, at 254-64; CHARLES L. MEE, JR., *THE GENIUS OF THE PEOPLE* 280 (1987).



### 1. *Unanimity*

The Constitutional Convention was not a unanimous affair. To begin with, Rhode Island had so opposed the idea of the Convention that it never sent a delegation to Philadelphia. Some individual delegates did not attend for the same reason, and others abandoned the Convention's efforts because they were fed up with the nationalizing direction of its work. By September 17, 1787, for example, Alexander Hamilton was the only remaining member of the New York delegation.<sup>64</sup> Even among those who lasted until the end, serious disagreement persisted; three delegates refused to sign the Constitution, and some of the signers openly expressed conflicting feelings about the document.<sup>65</sup> Nevertheless, the Attestation Clause states that the document was "[d]one in Convention by the *Unanimous Consent* of the States present."<sup>66</sup>

How did the framers manage to characterize the Convention as unanimous? The answer turns on a close reading of the phrase "of the States present." Voting at the Constitutional Convention took place on a state-by-state basis, such that each state's delegation registered only one "aye" or "nay" vote on behalf of its members. Individual delegates wishing to take a position on a motion before the Convention were thus forced to muster a majority of like-minded votes within their delegation. Indeed, Madison's notes from the Convention recount only the state-by-state votes on each motion, so it is impossible for us to know from the vote tallies alone how close these votes were among the individuals present, or which delegates favored or disfavored a proposal at issue. The vote to "agree to the Constitution" was no different.<sup>67</sup>

But what about Rhode Island and New York? These two states were, for the purposes of the Attestation Clause, treated as "not present" at the Constitutional Convention. In the case of Rhode Island, this characterization makes sense, as no one from the state ever showed up at Philadelphia. And, sure enough, no one from Rhode Island shows up among the Constitution's signatories.

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64. See 1 VILE, *supra* note 20, at 39-40.

65. See *supra* Section II.A. Although he ultimately signed the Constitution, James McHenry did not hide his doubts, characterizing himself as "opposed to many parts of the [constitutional] system" and only grudgingly accepting because "he distrust[ed] his own judgment." 2 FARRAND'S RECORDS, *supra* note 1, at 649.

66. U.S. CONST. art. VII, para. 2 (emphasis added); see also JOHN R. VILE, A COMPANION TO THE UNITED STATES CONSTITUTION AND ITS AMENDMENTS 119 (4th ed. 2006) (noting that the Constitution's signatures "downplayed" the fact that "the delegates were not themselves unanimous").

67. See 2 FARRAND'S RECORDS, *supra* note 1, at 633.

New York presents a more complicated picture. Unlike Rhode Island, the Empire State sent a three-person delegation to the Convention that remained present there for a substantial portion of the Convention's duration. In fact, the New York delegation dissolved precisely because a majority of its members did not consent to the Convention's plans.<sup>68</sup> Even so, the Convention allowed New York's remaining delegate, Alexander Hamilton, to sign the Constitution.<sup>69</sup> In

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68. Robert Yates and John Lansing, Jr., the two New York delegates to have left Philadelphia, explained their departure in a letter to the Governor:

We were not present at the completion of the new constitution; but before we left the convention, its principles were so well established, as to convince us, that no alteration was to be expected, to conform it to our ideas of expediency and safety. A persuasion, that our further attendance would be fruitless and unavailing, rendered us less solicitous to return.

- 3 FARRAND'S RECORDS, *supra* note 1, at 247. See generally BERNSTEIN, *supra* note 8, at 191-98 (describing the "frustration and deadlock" within the New York delegation). It should be noted that had Hamilton's co-delegates stuck around, they would have thwarted Federalist efforts to characterize the agreement at Philadelphia as "unanimous." Indeed, this point holds for all Antifederalists who chose to abandon the Constitutional Convention rather than fight their battles within it. See Paul Finkelman, *Turning Losers into Winners: What Can We Learn, if Anything, from the Antifederalists?*, 79 TEX. L. REV. 849, 872 (2001) (reviewing SAUL CORNELL, *THE OTHER FOUNDERS: ANTI-FEDERALISM AND THE DISSENTING TRADITION IN AMERICA, 1788-1828* (1999)) ("Had the antifederalists been a little shrewder, the document would have read something like this: 'Endorsed by the votes of the state delegations, by a vote of ten aye and three nay.'").
69. Interestingly, New York was the only state not to specify a quorum requirement within the credentials issued to its delegation. Compare Resolution, Feb. 28, 1787 (N.Y.) (no quorum requirement), reprinted in 1 ELLIOT'S DEBATES, *supra* note 4, at 127, with An Act for Appointing Delegates to Meet in Convention of the States, May 10, 1787 (Conn.) (quorum requirement of one), reprinted in 1 ELLIOT'S DEBATES, *supra* note 4, at 127; An Act Appointing Deputies from This State to the Convention Proposed To Be Held in the City of Philadelphia, Feb. 3, 1787 (Del.) (quorum requirement of three), reprinted in 1 ELLIOT'S DEBATES, *supra* note 4, at 130-31; An Ordinance for the Appointment of Deputies from This State, Feb. 10, 1787 (Ga.) (quorum requirement of two), reprinted in 1 ELLIOT'S DEBATES, *supra* note 4, at 137-38; An Act for the Appointment of, and Conferring Powers on, Deputies from This State to the Federal Convention, May 26, 1787 (Md.) (quorum requirement of one), reprinted in 1 ELLIOT'S DEBATES, *supra* note 4, at 131; Resolution, Apr. 9, 1787 (Mass.) (quorum requirement of three), reprinted in 1 ELLIOT'S DEBATES, *supra* note 4, at 126-27; An Act for Appointing Deputies from This State to the Convention, June 27, 1787 (N.H.) (quorum requirement of two), reprinted in 1 ELLIOT'S DEBATES, *supra* note 4, at 126; Resolution, Nov. 23, 1786 (N.J.) (quorum requirement of three), reprinted in 1 ELLIOT'S DEBATES, *supra* note 4, at 128-29; Resolution, Feb. 24, 1787 (N.C.) (quorum requirement of three), reprinted in 1 ELLIOT'S DEBATES, *supra* note 4, at 133-36; An Act Appointing Deputies to the Convention Intended To Be Held in the City of Philadelphia, Dec. 30, 1786 (Pa.) (quorum requirement of four), reprinted in 1 ELLIOT'S DEBATES, *supra* note 4, at 129-30; Resolution, Apr. 10, 1787 (S.C.) (quorum requirement of two), reprinted in 1 ELLIOT'S

a sense, the framers were having it both ways, treating New York as “not present” for the purposes of determining state unanimity and “present” for the purpose of signing to such unanimity.<sup>70</sup> In this way, the delegates implied the consent of twelve states when only eleven had actually consented.<sup>71</sup>

It is not difficult to see why the framers would desire to communicate as much unanimity as possible. The greater the appearance of agreement at Philadelphia, the more seriously the people would take the framers’ proposal. The Constitution would have been easier to dismiss summarily if it had emerged from a conspicuously divided convention. Apparent unanimity, by contrast, endowed the document with credibility from the start of the ratification campaign and portended success down the road. Expressing optimism along these lines, the *American Herald* observed that “[t]he unanimity you have secured in your deliberations is an auspicious omen of our future concord and felicity.”<sup>72</sup>

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DEBATES, *supra* note 4, at 135-36; and An Act for Appointing Deputies from This Commonwealth to a Convention Proposed To Be Held in the City of Philadelphia, Oct. 16, 1786 (Va.) (quorum requirement of three), *reprinted in* 1 ELLIOT’S DEBATES, *supra* note 4, at 132. As a result, Hamilton might have argued that, even with Yates and Lansing gone, his lone presence kept the New York delegation intact. The Convention records, however, do not indicate that Hamilton—or anyone else—ever tried to make such an argument. We can only speculate as to why, but one possible explanation is that Yates and Lansing had conditioned their departure on a promise from Hamilton not to vote on behalf of New York. I thank Seth Barrett Tillman for sharing this observation with me.

70. The framers made a similar move in their letter accompanying the Constitution, which included “Mr. Hamilton from New York” in its list of approving states. Letter from the Federal Convention to the Continental Congress (Sept. 17, 1787), *reprinted in* 2 FARRAND’S RECORDS, *supra* note 1, at 664-67.
71. Of course, the extent to which such an implication registered with the American people would have depended on their familiarity with the finer points of parliamentary procedure. If, that is, eighteenth-century Americans possessed a sophisticated knowledge of quorum requirements, bloc-by-bloc voting practices, and the distinction between supporting a motion and attesting to that motion’s support, then Hamilton’s lone signature on the Constitution may have been sufficient to tip them off to the New York delegation’s opposition to the Constitution. Cf. Seth Barrett Tillman, *A Textualist Defense of Article I, Section 7, Clause 3: Why Hollingsworth v. Virginia Was Rightly Decided, and Why INS v. Chadha Was Wrongly Reasoned*, 83 TEX. L. REV. 1265, 1370 (2005) (arguing that modern-day “Americans have lost the ability to understand the political and parliamentary worlds as the Founders and ratifiers understood them”).
72. CHARLES WARREN, *THE MAKING OF THE CONSTITUTION* 729 (Fred B. Rothman & Co. 1993) (1928) (quoting Editorial, AM. HERALD (Boston), Sept. 30, 1787); *see also* THE FEDERALIST No. 37, at 198-99 (James Madison) (Clinton Rossiter ed., 1999) (“The real wonder is that so many difficulties [at the Convention] should have been surmounted, and surmounted with a unanimity almost as unprecedented as it must have been unexpected. It is impossible for any man of candor to reflect on this circumstance without partaking of the astonishment.

The Federalists' push for unanimity manifested itself once more in Philadelphia a few weeks after the signing. The Second Continental Congress had received the freshly penned document and now faced the question whether to submit copies to the states for ratification. Though some members of Congress opposed the idea, the Federalists' "parliamentary maneuvering" ultimately generated majoritarian support for the document within each state delegation.<sup>73</sup> Thanks again to state-by-state voting, the Federalists once again secured a "unanimous" vote for their Constitution from a divided body. Pleased with this result, George Washington later confided to James Madison that "[t]his apparent unanimity will have its effect. Not every one has opportunities to peep behind the curtain; and . . . the appearance of unanimity in that body on this occasion will be of great importance."<sup>74</sup> One suspects that Washington felt the same way about the unanimity to which he had attested at the close of the Constitutional Convention.

## 2. *Prestige*

The signatures highlighted a second matter of great importance to the ratifying public: the prestige of the body assembled at the Constitutional Convention. It was no secret that the states had sent A-list celebrities to Philadelphia—Thomas Jefferson once referred to the group as an "assembly of demigods"<sup>75</sup>—but it certainly did not hurt the chances of ratification to recapitulate the Convention's distinguished roster on the face of its final product. Many ratifiers lacked the political expertise needed to make an informed judgment about the intricacies of the Constitution's design; for them, ratification would be largely a question of trust. The delegates hoped to

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It is impossible for the man of pious reflection not to perceive in it a finger of that Almighty hand which has been so frequently and signally extended to our relief in the critical stages of the revolution."). Meanwhile, the same Antifederalist who had drawn attention to the attesting nature of signatures, *see* text accompanying note 45 *supra*, also sought to pierce their veil of unanimity. *See* Letter to the Editor, *supra* note 45 ("[A]ll we know is that there were members enough from each state to give the vote of their state in favor of it. For it may not be totally useless to observe, that the plan itself does not say more, than that 'the States present' agreed to it.") (emphasis in original).

73. *See* RUTLAND, *supra* note 62, at 18.

74. Letter from George Washington to James Madison (Oct. 10, 1787), *quoted in* RUTLAND, *supra* note 62, at 19.

75. Letter from Thomas Jefferson to John Adams (Aug. 30, 1787), *in* 2 THE ADAMS-JEFFERSON LETTERS 196 (Lester J. Cappon ed., 1956) ("I have no doubt that all their other measures will be good & wise. [It] is really an assembly of demigods.").

win this trust by drawing attention to the many prominent and popular statesmen involved in the Constitution's creation.<sup>76</sup>

Among the most prominent and popular of these statesmen were Benjamin Franklin and George Washington. Akhil Amar has argued that "[e]veryone at Philadelphia understood that Washington's name alongside Franklin's on the bottom of the proposed Constitution might be the key to ratification. If America's most revered figures vouched for the new document, this fact alone might persuade doubters to give the experiment a try."<sup>77</sup> For those unsure about the Convention's plan, the signatures of these two national heroes would have been a persuasive, if not a dispositive, indicator of the Constitution's worth. As Charles Warren later made clear, "That many accepted the Constitution on the strength of Washington's and Franklin's signatures is undoubted."<sup>78</sup>

Taking the Convention's cue, Federalist promoters of the Constitution were eager to draw attention to Washington and Franklin's names. A widely circulated Federalist song, for example, featured the following lyrics:

With gratitude let us acknowledge the worth,  
Of what the Convention has call'd into birth  
And the Continent wisely confirm what is done  
By Franklin the sage, and by brave Washington.<sup>79</sup>

Another writer mused, "If [the names of] a WASHINGTON, a FRANKLIN, and other American patriots are still dear to [the people], we may venture to hope, that a speedy compliance with the recommendation of the late Convention will be the effect of their meeting . . . ."<sup>80</sup> In the same vein, a correspondent doubted that

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76. Taking note of just this fact, a letter to the *New Hampshire Recorder* marveled at "what CHARACTERS were employed in [the Constitution's] construction, and finally sanctioned it by their signatures and recommendation." Letter to the Editor, N.H. RECORDER, Feb. 26, 1788, at 4.

77. AMAR, *supra* note 3, at 134-35.

78. WARREN, *supra* note 72, at 729 n.1.

79. *The Grand Constitution: Or, The Palladium of Columbia: A New Federal Song*, MASS. CENTINEL, Oct. 6, 1787, at 24, reprinted in 13 DOCUMENTARY HISTORY, *supra* note 58, at 344, 345.

80. Editorial, N.H. SPY, Dec. 4, 1787, at 47; see also News, PROVIDENCE GAZETTE & COUNTRY J., Sept. 29, 1787, at 2 ("The concurrence of this venerable patriot [Franklin] in this Government, and his strong recommendation of it, cannot fail of recommending it to all his friends in Pennsylvania.").

the gentlemen who [had] withheld their assent from the Federal Convention [were] superior to Washington or Franklin, either in abilities or patriotism—men whose names, born on the wings of fame, are known throughout the world—and whose merit is universally acknowledged.<sup>81</sup>

Such arguments put opponents of the Constitution in a tricky position. For all practical purposes, Washington and Franklin were unimpeachable, and for those who warned against putting too much stock in their reputations, the backlash could be furious. One Antifederalist, for example, had urged Pennsylvanians to consider the Constitution “uninfluenced by the authority of names,” worrying of the “two illustrious personages” that “the unsuspecting goodness and zeal of the one, has been imposed on” and that the “weakness and indecision attendant on old age, has been practiced on in the other.”<sup>82</sup> Yet even this note of caution drew a scathing rebuke:

This defamer has even dared to let fly his shafts at a WASHINGTON, and a FRANKLIN, who, he tells you, have been so mean, ignorant and base, as to be dupes to the designs of the other members—Is not every man among you fired with resentment against the wretch who could undertake a jab thus low, infamous and vile? [A]nd who was so prone to slander, as wantonly to traduce names dear to every American; names, if not respected and esteemed, at least admired, even by their enemies.<sup>83</sup>

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81. Editorial, N.H. RECORDER & WKLY. ADVERTISER, Dec. 4, 1787, at 2.

82. *To the People of Pennsylvania*, CARLISLE GAZETTE, Oct. 24, 1787, at 2.

83. *To the People of Pennsylvania*, MD. J. & BALT. ADVERTISER, Nov. 6, 1787, at 1. Adopting a more neutral stance, Connecticut delegate Roger Sherman tried to refocus the debate on the merits of the Constitution itself:

[O]ne party has seriously urged[] that we should adopt the *New Constitution* because it has been approved by *Washington* and *Franklin*: and the other . . . ha[s] urged that we should reject, as dangerous, every clause thereof, because that *Washington* is more used to command as a soldier, than to reason as a politician—*Franklin* is *old*—others are *young*—and [James] *Wilson* is *haughty*. You are too well informed to decide by the opinion of others, and too independent to need a caution against undue influence.

Roger Sherman, *To the People of Connecticut*, NEW HAVEN GAZETTE, Nov. 22, 1787, reprinted in *FRIENDS OF THE CONSTITUTION, WRITINGS OF THE “OTHER” FEDERALISTS* 179, 179 (Colleen A. Sheehan & Gary L. McDowell eds., 1998).

In the end, Washington's signature probably mattered more than any other. Reporting from the Virginia ratifying convention, Federalist Charles Thruston acknowledged that things were close, but ultimately predicted that "the party in favour of the constitution must prevail; the signature and approbation of our great WASHINGTON, will give it a preponderancy to weigh down all opposition."<sup>84</sup> The signature, after all, hinted not only at Washington's support for ratification, but also at his future political plans. This phenomenon did not go unnoticed by Gouverneur Morris, who referenced it in a letter to Washington himself:

I have observed that your name to the new Constitution has been of infinite service. Indeed, I am convinced that if you had not attended the Convention, and the same paper had been handed out to the world, it would have met with a colder reception, with fewer and weaker advocates, and with more and more strenuous opponents. As it is, should the idea prevail that you will not accept the Presidency, it would prove fatal in many parts.<sup>85</sup>

Put another way, by signing his name under Article VII, Washington had signed on to serve under Article II.<sup>86</sup> And Washington's likely service under Article II argued in favor of ratification.

### 3. *Momentousness*

The Constitution's signatures also communicated to the people the extraordinary importance of the decision they had been called upon to make. Emphasis on momentousness figured prominently in Federalist rhetoric; indeed, it was this theme on which Publius began the Federalist Papers:

It has been frequently remarked that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not

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84. *Baltimore (Maryland) December 18*, U.S. CHRON. (Providence, R.I.), Jan. 10, 1788, at 2.

85. Letter from Gouverneur Morris to George Washington (Oct. 30, 1787), reprinted in WARREN, *supra* note 72, at 730.

86. See AMAR, *supra* note 3, at 135 ("Every man at Philadelphia also understood, as did later ratifiers, that Washington would likely serve as America's first President. What better way to remind fence-sitters of Washington's place in the document's past and future than to use the very label for the chief executive that everyone knew Washington had worn in the Convention itself?").

of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force. If there be any truth in the remark, the crisis at which we are arrived may with propriety be regarded as the era in which that decision is to be made; and a wrong election of the part we shall act may, in this view, deserve to be considered as the general misfortune of mankind.<sup>87</sup>

Adopting Bruce Ackerman's dualist terminology, we might say that the Constitution's signatures helped communicate this moment of "constitutional" rather than "normal" politics.<sup>88</sup> In particular, the signatures' uniqueness would have reminded the ratifiers of the unusual responsibilities they faced and the special solidarity required to meet them. Those confronting the Constitution's signatures would not even need to discern the signatories' names to get the point. The penstrokes would by their numerosity alone convey the extraordinary political dynamics of the moment.

The point is nicely illustrated by the state ratification conventions. Each of these conventions issued "ratification instruments," documents that registered a convention's assent to the Constitution. Of these ratification instruments, six out of thirteen contain an unusually large number of signatures. In particular, long lists of names appear on the ratification instruments of Georgia (26 signatures), Delaware (30 signatures), New Jersey (39 signatures), Pennsylvania (47 signatures), Maryland (64 signatures), and Connecticut (129 signatures).<sup>89</sup> These six conventions thus departed from the traditional mode of signing that accompanied most government documents of the era (including

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87. THE FEDERALIST No. 1, at 1 (Alexander Hamilton) (Clinton Rossiter ed., 1999).

88. See 1 BRUCE ACKERMAN, WE THE PEOPLE: FOUNDATIONS (1991). Dualism, as Ackerman describes it, "seeks to distinguish between two different decisions that may be made in a democracy. The first is a decision by the American people; the second, by their government." *Id.* at 6.

89. Of these states, Delaware, New Jersey, and Georgia displayed the names of convention delegates listed by county, 1 ELLIOT'S DEBATES, *supra* note 4, at 319-21, 324, while Pennsylvania, Connecticut, and Maryland listed the names in no particular order, *id.* at 319-22, 324-25. Of the remaining states, Massachusetts's ratification instrument displayed the signatures of the president, vice president, and secretary from its convention, *id.* at 322-23; South Carolina, North Carolina, and Rhode Island the signatures of each convention's president and secretary, *id.* at 325, 331-33, 334-37; Virginia the signature of its president only, *id.* at 327; and New York the signatures of its president and two secretaries, *id.* at 327-31. New Hampshire was the only state to include signatures of persons signing as convention officers and persons signing as state officers. Its ratification instrument displayed the signatures of the president and secretary of the convention, in addition to the president and the secretary of the state. *Id.* at 325-27.



the constitutions of their own states),<sup>90</sup> and chose instead the irregular mode of signing reflected by the document they had ratified. We cannot know for sure what motivated this choice, but it seems possible that the unusual manner of signing was at least partially inspired by (and reflective of) the Constitution's momentousness motif.<sup>91</sup>

Momentousness was suggested not only by the differences between the Constitution's signatures and those on less important documents, but also by evident connections between the Constitution's signatures and those on the Declaration of Independence. The latter document had come into being just eleven years prior to the former, and, given its widespread popularity at that time, the Constitution's proponents were eager to frame the ratification campaign as carrying forward the Revolution's spirit. At the Virginia ratification convention, for example, George Wythe

took a cursory view of the situation of the United States previous to the late war, their resistance to the oppression of Great Britain, and the glorious conclusion and issue of that arduous conflict. To perpetuate

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90. See Section I.B. *supra*. Consider also the "credentials" issued by state officials to delegates sent to the Constitutional Convention, whose signatures were both few in number and unremarkable in form. See generally 1 ELLIOT'S DEBATES, *supra* note 4, at 126-39 ("Credentials of Members of the Federal Convention"). New Hampshire issued one credential signed by the Speaker of the House, President of the Senate, and a secretary. *Id.* at 126. Massachusetts issued a credential signed by the Governor and a secretary. *Id.* at 127. Connecticut's credential bore only the signature of a secretary. *Id.* New York's credential was signed sequentially. At the top is a statement signed by Governor George Clinton that affirms a subsequently appended House Resolution signed by a clerk. *Id.* at 127-28. New Jersey issued three separate credentials at three different time periods. The first two of these were signed in 1786 and 1787 by then-Governor William Livingston and the third one was signed by vice president Robert L. Hooper. *Id.* at 128-29. (All three included the signature of a secretary as well.) Pennsylvania issued one credential signed by the Speaker of the House, the Clerk of the General Assembly, and the Master of the Rolls, and later issued a supplement to that credential (signed by the same three parties) adding Benjamin Franklin to the state's delegation. *Id.* at 130. Maryland's credential bore the signatures of two clerks and the Governor. *Id.* at 131. Each assembly in Virginia (the House of Delegates and the House of Senators) issued a credential (signed by legislative clerks) approving a slate of seven delegates; these credentials were subsequently amended by a proclamation (signed by Edmund Randolph) that replaced Patrick Henry with James McClurg. *Id.* at 132-33. North Carolina, South Carolina, and Georgia all issued individual letters of authorization to each of their delegates. These letters were signed by each state's governor and by a secretary. *Id.* at 133-39.

91. Interestingly, these six states were among the first seven to ratify the Constitution. One highly speculative explanation of this correlation is that the earlier conventions to ratify were more enthusiastic about doing so and thus more inclined to mark the completion of their efforts with signing ceremonies.

the blessings of freedom, happiness, and independence, he demonstrated the necessity of a firm, indissoluble union of the states.<sup>92</sup>

And at the Pennsylvania ratifying convention, James Wilson countered charges that the Constitution violated the Articles of Confederation by reading out loud the Declaration's recognition of "the Right of the People to alter or abolish" ineffective governments.<sup>93</sup> "This is the broad basis," Wilson continued, "on which our independence was placed: on the same certain and solid foundation this system is erected."<sup>94</sup> Such allusions appeared in the popular press as well. The *Federal Gazette*, for example, argued that "[n]ot even the declaration of independence was of more magnitude" than the Constitution, "for by the establishment of this constitution only, can independence prove a blessing."<sup>95</sup> Similarly, the *United States Chronicle* found it "agreeable . . . how many of the same events and circumstances concur in favour of the new federal government, that concurred in favour of the opposition of Great Britain and the declaration of independence in the beginning of the war."<sup>96</sup> By 1788, independence-laden rhetoric had become prevalent enough for George Washington to observe that "the spirit which at present agitates the nation has been in a great measure caught from the American revolution."<sup>97</sup>

In at least three respects, the Constitution's signatures contributed to the Federalist's efforts to highlight the document's ties to the American Revolution. First, the Attestation Clause dated the signatures by reference to the "Year . . . of the Independence of the United States of America the twelfth,"

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92. Debates from the Virginia Convention, in 3 ELLIOT'S DEBATES, *supra* note 4, at 586.

93. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

94. Debates from the Pennsylvania Ratification Convention, in 2 ELLIOT'S DEBATES, *supra* note 4, at 457. For their own part, Antifederalists made sure to characterize the Constitution as incompatible with the Declaration's guarantees. For an overview of the Declaration's role in ratification debates, see GORDON S. WOOD, *THE CREATION OF THE AMERICAN REPUBLIC 1776-1787*, at 532-43 (1969).

95. Editorial, *FED. GAZETTE*, Nov. 26, 1788, at 2.

96. Editorial, *U.S. CHRON.*, Apr. 17, 1788, at 2 (observing, among other things, that "[t]he same characters who took the lead in each of the States in the struggle for liberty in the glorious years 1775 and 1776, now take the lead in their exertions to establish the federal government"); see also Editorial, *SALEM MERCURY*, May 27, 1788, at 2 (arguing that ratification would promote "[t]he spirit of liberty . . . first excited by the translation and republication of the Farmer's Letters, and since by the Declaration").

97. Letter from George Washington to Edmund Randolph (Oct. 17, 1788), in 5 ELLIOT'S DEBATES, *supra* note 4, at 575.

thereby making an implicit reference to the events of July 4th, 1776.<sup>98</sup> Second, as mentioned above, many of the signatures belonged to heroes from the American Revolution.<sup>99</sup> Six of the Constitution's signatories—Benjamin Franklin, James Wilson, George Clymer, Robert Morris, George Read, and Roger Sherman—had just eleven years earlier signed the Declaration, and many more (including, for example, Washington and Hamilton) had made important military contributions to the War for Independence. Finally, the sheer number of signatures that appeared on the Constitution would have reminded ratifiers of the Declaration, one of the few well-known national documents to display a comparably large number of names.<sup>100</sup> By creating these connections, the signatures on the Constitution may have helped link the current struggle for unity to the past struggle for separation. Although Antifederalists argued that the Constitution broke with the spirit of '76,<sup>101</sup> Federalists could rely on the Constitution's signatures as visual cues to suggest continuity with the Revolutionary cause.

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98. See U.S. CONST. art. VII, para. 2 ("Done in Convention . . . in the Year . . . of the Independence of the United States of America the Twelfth . . .").

99. Cf. *supra* Subsection III.A.2. (discussing the collective prestige of the Constitution's signers).

100. Indeed, the Declaration itself had broken with tradition in displaying such a large number of signatures. See PAULINE MAIER, *AMERICAN SCRIPTURE: MAKING THE DECLARATION OF INDEPENDENCE* 151 (1997) (noting that "[t]he Second Continental Congress signed its 'Olive Branch Petition' to the King but no other document previous to the Declaration of Independence"); LOIS G. SCHWOERER, *THE DECLARATION OF RIGHTS*, 1689, at 13 (1981) ("Of documents comparable to the [English] Declaration of Rights, only the Declaration of Independence of the American colonies was signed by its framers.").

101. As one Antifederalist argued:

Who is he so base, that will peaceably submit to a government that will eventually destroy his sacred *rights and privileges*? The liberty of conscience, the liberty of the press, and the liberty of trial by jury, &c, must lie at the mercy of a few despots—an infernal junto, that are for changing our *free republican government* into a tyrannical and absolute monarchy. These are what roused the sons of America to oppose Britain, and from the nature of things, they must have a similar effect now.

Philadelphiansis, *For the Freeman's Journal*, FREEMAN'S J., Jan. 23, 1788, at 3; see also Alfred, Letter to the Editor, *MASS. GAZETTE*, Oct. 28, 1788 at 1 ("The privilege of trial by jury, in civil cases, is so solemnly thought of in the declaration of independence . . . that one might have expected to have found it in a new frame of government—But it is not there.").

*B. The Signatures as a Constraining Device*

A second way that the signatures promoted the ratification campaign was by locking in the signatories' support for the Constitution. As was well understood by the Federalists, the Constitution's chances depended in part on the backing of politically influential figures within each state—many of whom had been present at the Constitutional Convention and had immersed themselves in the Convention's work. Understandably, the Constitution's most ardent supporters did not relish the thought of tentative supporters at Philadelphia returning home and, sensing murmurings of popular discontent, changing their allegiances.

The risk of flip-flopping was heightened because the Convention's proceedings had been, and would continue to be, a clandestine affair. Much to the chagrin of many,<sup>102</sup> the Convention's meetings had taken place behind closed doors, and its official records would be stowed away until 1818.<sup>103</sup> As a result, little more than word of mouth could prevent delegates who had voted in favor of the Constitution or its key component parts to claim later that they had never done so.

To guard against this risk, the Constitution's supporters turned to a record of their proceedings that *would* soon become publicly available: the Constitution itself. Signatures on the Constitution would link the delegates to the document, name-by-name and state-by-state, for all the world to see. As suggested earlier,<sup>104</sup> not everyone regarded the signatures as endorsements of the Constitution, but this interpretation prevailed among many, thereby constraining the ability of yes-voters at Philadelphia to become naysayers back home. To be sure, the Constitution's signers never formally pledged to endorse the document during ratification. Nonetheless, by putting their names on the document itself, they made it difficult to distance themselves from the document without appearing to be hypocrites.

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102. See Letter from Thomas Jefferson to John Adams, *supra* note 75 ("I am sorry they began their deliberations by so abominable a precedent as that of tying up the tongues of their members. Nothing can justify this example but the innocence of their intentions, & ignorance of the value of public discussions.").

103. The Convention had early on adopted the rule that "nothing spoken in the House be printed, or otherwise published, or communicated without leave." 1 FARRAND'S RECORDS, *supra* note 1, at 15. See generally 2 VILE, *supra* note 20, at 692-96 (discussing the secretary of the Convention's records and the eventual disclosure of the Convention's official records in 1818).

104. See *supra* Part II.

Again, we can analogize to the signatures on the Declaration of Independence. In particular, the Declaration's signatures were introduced by the following passage: "And for the support of this Declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes, and our sacred Honor."<sup>105</sup> This reference to "Lives" was a literal one; by putting their names to the Declaration—what Pauline Maier has described as "a public confession of treason"<sup>106</sup>—John Hancock and his colleagues in practical effect signed their own "wanted" posters. Their signatures, that is, made permanent and public the signatories' repudiation of King George; for these individuals, there was no turning back once name was put to paper. An unsigned Declaration might have allowed a delegate to deny his involvement in the venture if things turned out badly; the Declaration, however, would accommodate no such jumping off the bandwagon.

A similar, albeit less explicit, form of constraining was effected by the Constitution's signing. When Virginia delegate Edmund Randolph announced his decision to withhold his name from the Constitution, Franklin responded that he "hoped that [Randolph] would yet lay aside his objections, and, by concurring with his brethren, prevent the great mischief which the refusal of his name might produce."<sup>107</sup> This "great mischief" Franklin had described earlier in his speech:

If every one of us in returning to our Constituents were to report the objections he has had to [the Constitution] . . . we might prevent its being generally received, and thereby lose all the salutary effects & great advantages resulting naturally in our favor among foreign Nations as well as among ourselves, from our real or apparent unanimity.<sup>108</sup>

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<sup>105</sup>. THE DECLARATION OF INDEPENDENCE para. 32 (U.S. 1776). To be sure, the Constitution's signatures are distinguishable from the Declaration's signatures in that only the latter expressed a formal pledge of support. My point here is only that both sets of signatures locked in the support of the signers by making that support highly visible.

<sup>106</sup>. MAIER, *supra* note 100, at 152.

<sup>107</sup>. 2 FARRAND'S RECORDS, *supra* note 1, at 646. Alexander Hamilton echoed similar concerns. Madison's notes have Hamilton worrying that "[a] few characters of consequence, by opposing or even refusing to sign the Constitution, might do infinite mischief by kindling the latent sparks which lurk under an enthusiasm in favor of the Convention which may soon subside." *Id.* at 645 (emphasis added).

<sup>108</sup>. *Id.* at 643. In May of 1788, Charles Pinckney openly worried that some of Franklin's worst fears were coming to light. In a response to Luther Martin's widely published negative exposé on the Constitutional Convention, Pinckney wrote:

At a time when the prospects of ratification remained uncertain, Franklin's apprehensions were not insignificant, and he certainly had good reason to discourage his colleagues from becoming turncoats. The signatures represented one way of doing so. Just as the signatories to the Declaration had all but assured the futility of later attempts to disavow their revolutionary act, so too would the Constitution's signers effectively preclude themselves from later repudiating the document.

It was just this element of the signing that caused Randolph not to put his name to the Constitution. In declining to sign, Randolph assured his fellow delegates that "he did not mean by this refusal to decide that he should oppose the Constitution without doors. He meant only to keep himself free to be governed by his duty as it should be prescribed by his future judgment."<sup>109</sup> In other words, Randolph would keep quiet for now, but he could make no promises about the future. And his ability to "keep himself free" would depend on leaving behind no paper trail. As Randolph later wrote,

A constitution ought to have the hearts of the people on its side. But if, at a future day, it should become burdensome after having been adopted in the whole, and they should insinuate that it was in some measure forced upon them, by being confined to the single alternative of taking or rejecting it altogether,—under my impressions, and with my opinions, I should not be able to justify myself, had I signed.<sup>110</sup>

Randolph's refusal to sign thus exhibited the very sort of behavior Franklin was hoping to prevent. Had every delegate taken Randolph's wait and see

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What pity the salutary caution of Doct. Franklin, just previous to his signing the constitution recommended by the convention, had not been strictly attended to! If we split, it will in all probability happen in running headlong on the dangerous rock he so prophetically (as it were) warded us from, "That the opinions of the errors of the constitution born within the walls of the convention, should die there, and not a syllable be whispered abroad." This Hint is full of that foresight and penetration the Doctor has always been remarkable for.

Charles Pinckney, Letter to the Editor, *STATE GAZETTE OF S.C.*, May 2, 1788, *reprinted in* 3 *FARRAND'S RECORDS*, *supra* note 1, at 300-01.

109. 2 *FARRAND'S RECORDS*, *supra* note 1, at 645; *see also* Letter from Edmund Randolph to Beverly Randolph (Sept. 18 1787), *reprinted in* 3 *FARRAND'S RECORDS*, *supra* note 1, at 83 ("Altho' the names of Colo. Mason and myself are not subscribed, it is not, therefore, to be concluded that we are opposed to its adoption. Our reasons for not subscribing will be better explained at large, and on a personal interview, than by letter.").

110. A Letter of His Excellency Edmund Randolph, Esq., On the Federal Constitution, to the Honorable Speaker of the House of Delegates, Va. (Oct. 10, 1787), *reprinted in* 1 *ELLIOT'S DEBATES*, *supra* note 4, at 489-90.

approach, the Constitution might have lost support among key leaders. But by linking the delegates to the document, the signatures tended to prevent their creators from abandoning the Constitution down the road. In this sense, the signatures not only communicated the signers' present-day support for the Constitution; they also ensured that this present-day support would not turn into future opposition.

#### IV. THE SIGNATURES IN MODERN CONSTITUTIONAL DEBATE

The preceding discussion has focused on history, offering observations about the motives and understandings of persons from a time long past. But, as is often the case with historical inquiries, the story of the signatures' past can inform inquiries of the present. Along these lines, this Part explores the signatures' influence on some modern-day debates about the Constitution's meaning. In particular, it will explore three ways in which the signatures might (or might not) affect our understanding of the twenty-first century Constitution. The first relates to federalism, the second relates to the Declaration of Independence, and the third relates to the idea of constitutional authorship.

##### A. Federalism

Some commentators have cited the signatures in support of claims about the relationship between the federal government and the states. The signatures, these scholars argue, evidence an understanding on the part of the framers that the new national union would reserve ample room for state sovereignty.<sup>111</sup> By signing the Constitution on a state-by-state basis, and by emphasizing the consent of the "states present," the framers (so this argument goes) signaled that the states would continue to constitute powerful independent units within the new federal regime. This is in essence a variant of the argument—most prominently associated with Justice Thomas's dissent in *U.S. Term Limits v. Thornton*—that Article VII's call for state-by-state

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111. Raoul Berger, *Interstate Commerce: A Response to Sanford Levinson*, 74 TEX. L. REV. 785, 787 (1996); see also *City of Atlanta v. Stokes*, 165 S.E. 270, 279 (Ga. 1932) (Gilbert, J., dissenting) (citing "[t]he last and concluding words of that great document" to support a claim that the states possessed a concurrent taxing power); cf. Louise Weinberg, *Of Sovereignty and Union: The Legends of Alden*, 76 NOTRE DAME L. REV. 1113, 1150 (2001) (noting that the Attestation Clause "might signify retained sovereignty, but it might also signify . . . that the states had submitted themselves in the plan of the Convention to federal supremacy") (footnotes omitted).

ratification limited the extent to which the new union's national character absorbed the old union's federalist character.<sup>112</sup>

Whatever the merits of Justice Thomas's claims about Article VII, parallel claims about the Constitution's signing face two problems. First, recall that voting throughout the Constitutional Convention occurred on a state-by-state basis; thus, the Attestation Clause's reference to "states" reflects a procedural rule used throughout deliberations at Philadelphia.<sup>113</sup> Given that the delegates adopted this procedural rule before they began work on the Constitution itself, the rule is minimally probative of points related to constitutional design. One might argue in response that the delegates' decision to adopt this procedural rule was borne out of the same commitment to state sovereignty that later worked its way into the framers' constitutional plan. But this argument, too, carries little persuasive weight. The Constitutional Convention, after all, met at a time when the Articles of Confederation were still in effect, so state-by-state voting was just as likely to evidence an understanding about federalism under the Confederation regime as it was about federalism under the future constitutional regime.

Second, as we have already seen, state-by-state signing enabled the delegates at Philadelphia to package the Constitution as an object of unanimous agreement and, in particular, to gloss over the uncomfortable fact that a majority of the appointed members of the New York delegation opposed the document. Given this practical motive for incorporating the states into the signatures, it is unlikely that the form of signing arose solely out of conceptual understandings about federalism within the new union.

These observations, of course, do not disprove the claim that the framers intended to create a sharply circumscribed national government. They do, however, cast doubt on any attempt to characterize the signatures as indicative of such an intention.

### *B. Revolutionary Ties*

Another use of the signatures in contemporary debate cites them as evidence of the Constitution's close connection to the Declaration of

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112. 514 U.S. 779, 846 (1995) (Thomas, J., dissenting) ("The ultimate source of the Constitution's authority is the consent of the people of each individual State, not the consent of the undifferentiated people of the Nation as a whole. The ratification procedure erected by Article VII makes this point clear.").

113. 1 FARRAND'S RECORDS, *supra* note 1, at 10-11 (explaining the delegates' decision to adopt a state-by-state voting rule).



Independence. Proponents of this argument focus in large measure on the signatures' date—in particular, the Attestation Clause's reference to "the Year . . . of the Independence of the United States of America the Twelfth."<sup>114</sup> This language, commentators have argued, indicates that the Constitution, and the new government to serve under it, marked a continuation of, rather than deviation from, the ideals that animated the nation's revolutionary struggle.<sup>115</sup> It confirms, in other words, that the Constitution "is but the body and the letter of which the [Declaration of Independence] is the thought and the spirit, and [that] it is always safe to read the letter of the Constitution in the spirit of the Declaration of Independence."<sup>116</sup>

My analysis supports this interpretation of the signatures. Indeed, as I have shown above, the signatures represented only part of a broader attempt by pro-Constitution forces to link the Constitution's ratification campaign to the country's recently completed independence campaign.<sup>117</sup> Given these widespread efforts to link the Declaration and Constitution throughout ratification, one can infer from the signatures' date not just the framers' understanding that the Constitution would carry forward the Declaration's spirit, but also the ratifiers' insistence on assurances to that effect. Put another way, the signatures remind us that late eighteenth-century America still held its Revolutionary efforts in high esteem and thus saw in the Constitution's "more perfect union" a better way to put the Declaration's principles into practice. To the extent, then, that courts and commentators have attempted to incorporate these ideas into constitutional arguments,<sup>118</sup> the signatures lend some measure of validation to their claims.<sup>119</sup>

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<sup>114</sup> U.S. CONST. art. VII.

<sup>115</sup> See, e.g., David Barton, *The Image and the Reality: Thomas Jefferson and the First Amendment*, 17 NOTRE DAME J.L. ETHICS & PUB. POL'Y 399, 451 (2003) (citing the signatures as "[a]dditional evidence that the two documents are interconnected and inseparable"); Clarence Thomas, *The Higher Law Background of the Privileges or Immunities Clause of the Fourteenth Amendment*, 12 HARV. J.L. & PUB. POL'Y 63, 65 (1989) ("If the Constitution is not a logical extension of the principles of the Declaration of Independence, important parts of the Constitution are inexplicable. One should never lose sight of the fact that the last words of the original Constitution as written refer to the Declaration of Independence, written just eleven years earlier.").

<sup>116</sup> *Gulf, Colo. & Santa Fe Ry. Co. v. Ellis*, 165 U.S. 150, 160 (1897); see also HARRY V. JAFFA, *ORIGINAL INTENT AND THE FRAMERS OF THE CONSTITUTION, A DISPUTED QUESTION* 394 (1994) (arguing that "the principles of the Declaration of Independence are the principles of the Constitution").

<sup>117</sup> See *supra* Section III.A.3.

<sup>118</sup> See Charles H. Cosgrove, *The Declaration of Independence in Constitutional Interpretation: A Selective History and Analysis*, 32 U. RICH. L. REV. 107, 109–17 (1998) (reviewing appeals to

C. *Constitutional Authorship*

We have seen that the Constitution's signing conflicted to some extent with Article VII, Article V, and the Preamble, all of which vested the power of constitutional authorship in the people at large, not in the elite cadre of men who drafted the document at Philadelphia. The signatures may in this way have muted the Constitution's populist overtones, by drawing undue attention to the "assembly of demigods" that—according to the Constitution itself—possessed no powers either to bring the Constitution into effect or to make subsequent amendments to it.

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the Declaration of Independence in Supreme Court opinions); Lee J. Strang, *Originalism, The Declaration of Independence, and the Constitution: A Unique Role in Constitutional Interpretation?*, 111 PENN ST. L. REV. 413, 415-31 (2006) (reviewing appeals to the Declaration made by members of the abolitionist movement, the women's suffrage movement, the civil rights movement, and the pro-life movement); *id.* at 432-37 (reviewing scholarly arguments about the Declaration's role in modern constitutional debate).

119. The Attestation Clause's dating of the Constitution has given rise to another interpretive claim—namely, that the Clause's reference to the "Year of our Lord" evidences an early lack of shyness about incorporating explicit religious references into public language. The most noteworthy instance of this claim comes from the U.S. Congress, which, in response to a Ninth Circuit decision on the Pledge of Allegiance, *Newdow v. U.S. Congress*, 292 F.3d 597 (9th Cir. 2002), resolved that:

The erroneous rationale of the 9th Circuit Court of Appeals in *Newdow* would lead to the absurd result that the Constitution's use of the express religious reference "Year of our Lord" in Article VII violates the First Amendment to the Constitution, and that, therefore, a school district's policy and practice of teacher-led voluntary recitations of the Constitution itself would be unconstitutional.

Act of Nov. 13, 2002, Pub. L. No. 107-293, § 1(16), 116 Stat. 2057, 2060; *see also* Am. Jewish Congress v. City of Chicago, 827 F.2d 120, 129 (7th Cir. 1987) (Easterbrook, J., dissenting) ("From the beginning of the Republic much of the federal government's symbology has been Christian—down to the dating of the Constitution itself . . ."); Barton, *supra* note 115, at 453 (2003) ("The use of the phrase 'in the year of our Lord'—acknowledging the reckoning of time based on the birth, life, and death of Jesus Christ—is a specific recognition of Christianity.").

My account of the signatures offers no significant contribution to this debate. That said, I cannot resist identifying an obvious problem with the *reductio ad absurdum* logic of the congressional resolution: the signing of the Constitution took place more than four years before ratification of the First Amendment. Thus, to claim that the Attestation Clause "violates" the First Amendment is simply to claim that the First Amendment supersedes the Attestation Clause. Any proven inconsistency, then, between these two pieces of the Constitution would be no more "absurd" than the clear inconsistency between, say, the Three-Fifths Clause and the Citizenship Clause of the Fourteenth Amendment.

There is some reason to worry that this sort of undue attention persists within our modern-day constitutional discourse. Consider the following three examples:

First, by law, the United States celebrates “Constitution Day” on the anniversary of the Constitution’s signing rather than on the anniversary of its ratification.<sup>120</sup> To commemorate this holiday, the National Constitution Center runs an exhibit in which visitors to the museum sign a giant replica of the Constitution surrounded by life-size statues of the delegates to the Constitutional Convention.<sup>121</sup>

Second, as Barry Friedman has demonstrated, certain strands of originalist thought reveal a “relative lack of attention to understandings of the Civil War Amendments.”<sup>122</sup> Professor Friedman has voiced concerns about this inattention to the nation’s “Second Founding,” observing that “[a]s a nation and a constitutional culture, we wallow deep in the waters of the Founding era,” but that “the rich history of the Civil War Amendments has barely been integrated into our national ethos.”<sup>123</sup> Akhil Amar has advanced similar arguments, characterizing our constitutional narratives as “Founding-obsessed” and underappreciative of the Reconstruction Amendments’ place “at the center, rather than the periphery, of the unfolding American epic.”<sup>124</sup>

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120. See 36 U.S.C. § 106(b) (2006) (“Constitution Day . . . commemorate[s] the formation and signing on September 17, 1787, of the Constitution . . . .”); see also Consolidated Appropriations Act of 2005, § 111(b), 118 Stat. 3344 (2004) (“Each educational institution that receives Federal funds for a fiscal year shall hold an educational program on the United States Constitution on September 17 of such year for the students served by the educational institution.”).

121. National Constitution Center, Constitution Day, At the Center, [http://www.constitutioncenter.org/ncc\\_progs\\_At\\_the\\_Center.aspx](http://www.constitutioncenter.org/ncc_progs_At_the_Center.aspx) (last visited Dec. 7, 2009).

122. Barry Friedman, *Reconstructing Reconstruction: Some Problems for Originalists (And Everyone Else, Too)*, 11 U. PA. J. CONST. L. 1201, 1208 (2009).

123. *Id.* at 1205.

124. Akhil Reed Amar, Heller, HLR, and *Holistic Legal Reasoning*, 122 HARV. L. REV. 145, 190 (2008); see also Tom Donnelly, *Our Forgotten Founders: Reconstruction, Public Education, and Constitutional Heroism*, 58 CLEV. ST. L. REV. (forthcoming 2010) (“For generations, our leading high school textbooks have praised the Founding generation and canonized certain ‘Founding Fathers,’ while, at the same time, largely ignoring Reconstruction’s key players and underemphasizing the constitutional revolution our Forgotten Founders envisioned (and began to wage).”).

Third, in a 2009 op-ed entitled “Sen. Feingold’s Constitution,” *Washington Post* columnist George Will criticized both the Seventeenth Amendment and a proposed amendment to the Constitution that would require states to fill vacant Senate seats through special elections. In particular, Will worried that this proposed amendment would repeat the Seventeenth Amendment’s error of “nudg[ing] the Senate still further away from the nature and function the Framers favored.”<sup>125</sup>

Each of these examples highlights a tendency within our constitutional culture to overvalue the framers’ role (and to undervalue our own role) in writing the American constitutional story. By celebrating Constitution Day on September 17, we give short shrift to the extraordinary process in which thousands of Americans discussed, debated, and decided the question whether to ratify the Constitution. In similar fashion, by downplaying the transformative significance of the Reconstruction Amendments, we perpetuate a myth that America’s constitutional past (and, for that matter, its constitutional future) has room for only one Founding Moment and only one set of Founding Fathers. And, finally, by condemning both actual and proposed constitutional amendments for eschewing plans the “framers favored,” we promote a blind faith in the constitutional innovations of the framers, while denying the possibility that We the People of the present might be able to make worthwhile innovations of our own.

To be clear, I do not intend to suggest that the signatures are responsible for contemporary Americans’ failure to take ownership of their Constitution, or even that such a failure is particularly widespread or severe. But I do wonder whether, to the casual observer at least, the signatures contribute to a constitutional consciousness that is framer-heavy and people-lite—one that treats the Constitution as law that the framers imposed on us, rather than law that our society has imposed, and continues to impose, on itself.

On further reflection, however, we need not view the signatures in this way. The critical point, which is developed in detail above, is that the signatures served most powerfully as a means to the end of popular ratification. Understood in this way, the signatures reflect not the special preeminence of the Constitution’s drafters, but rather the special work that these drafters (and many others) undertook to convince the American public to become the Constitution’s ultimate authors. The signatures, in other words, do not reveal some special sense of constitutional ownership by those who put their hands to the Constitution. To the contrary, these signatures reveal the signers’

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125. George F. Will, *Sen. Feingold’s Constitution*, WASH. POST, Feb. 22, 2009, at A19.

understanding that the Constitution belongs to the American people as a whole—beginning with those who would participate in the intensely democratic ratification process initiated by the signers themselves. Thus, when future constitutional actors propose future constitutional changes, we should judge their proposals not from the perspective of those persons with names on the Constitution, but from the perspective of those persons at whom these names are directed—namely, ourselves.

## CONCLUSION

I hope that this Note has conveyed at least three important points about the Constitution's signatures. First, as indicated both by Hugh Williamson's proposal and by other important founding documents of the era, the framers' decision to sign the Constitution was neither obvious nor automatic. Indeed, we can at least say that there were some plausible arguments to be made against signing the Constitution and that these arguments merited careful consideration. Second, as indicated by Part II, the meaning of the signatures was, from their inception, never clear, and their lack of clarity resulted not from sloppy draftsmanship, but from the political ingenuity of Benjamin Franklin and his fellow Federalists. Finally, as indicated by Part III, the Constitution's signatures proved a boon to the ratification effort. They did not, of course, single-handedly tip the scale in favor of ratification, but, as both a marketing device and as a constraining device, the signatures contributed to the Federalists' efforts to secure popular approval for the Constitution.

But most of all, I hope this Note has suggested that the Constitution's signatures, as formulaic as they may seem, are in fact the narrators of a rich piece of constitutional history. Once key contributors to the Constitution's ratification campaign, the signatures today contribute to our understanding of both the Constitution itself and the remarkable process through which it became the supreme law of the land.

